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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1942**

## No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER,

*vs.*

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

**PETITION FOR CERTIORARI FILED JANUARY 29, 1943.**

**CERTIORARI GRANTED MARCH 15, 1943.**

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1942

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[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, SIXTH DIVISION.**

No. 78

UNITED STATES OF AMERICA, Plaintiff,

vs.

CIVIL

State of Minnesota; County of Mahnomen, a Municipal Corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, as County Commissioners of said County, and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of Court of said County and her successors in office; and Robert Pearson, Defendants

STIPULATION AS TO CONTENTS OF TRANSCRIPT ON APPEAL—April 27, 1942

It Is Hereby Stipulated by and between the parties to the above entitled action, by and through their respective attorneys, that the following parts of the record, proceedings and evidence shall be included in the record on appeal herein, as follows, to-wit:

1. Amended Complaint.
2. Answer to the Amended Complaint.
3. Stipulation of Facts dated January 8, 1941.
4. Stipulation of Facts dated April 8, 1941.
5. The Findings of Fact, Conclusions of Law and Order for Judgment.
6. The Opinion.
7. The Supplemental Opinion.

[fol. 2] 8. The Judgment.

9. Motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment dated March 10, 1942.

10. Order Denying above motion dated March 28, 1942.
11. The Notice of Appeal with date of filing.
12. This Stipulation.

Dated this 27th day of April, 1942.

United States of America, Plaintiff, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota. Defendants Above Named, Except State of Minnesota, by J. A. A. Burnquist, Attorney General. Geo. B. Sjoselius, Assistant Attorney General. L. A. Wilson, County Attorney, Mahnomen County, by Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, St. Paul, Minnesota.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT—Filed November 7, 1940

[fol. 3] [Title omitted]

Victor E. Anderson, United States Attorney for the District of Minnesota, and C. U. Landrum, Special Assistant United States Attorney for the District of Minnesota, for and on behalf of the United States of America, Plaintiff, acting under the authority and direction of the Attorney General of the United States, bring this amended complaint against State of Minnesota; County of Mahnomen, a municipal corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen and John Adams, as Commissioners of said County and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of the District Court of said County and her successors in office, and Robert Pearson, Defendants, and thereupon complaining say:

I

That the defendant County of Mahnomen is and at all times herein mentioned was a municipal corporation, duly

organized and existing under and by virtue of the laws of the State of Minnesota as a County in said State. That Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, John J. Spaeth, Adolph J. Paul, Sigvald Tveit, Camilla Hardy are citizens of and residents of and are officials of said County of Mahnomen, now holding the official positions designated after their names, respectively, and Robert Pearson is a citizen of and resident of said County of Mahnomen, and that this action is brought against said officials in their official capacity and against Robert Pearson individually.

II

That at all times herein mentioned said plaintiff by reason of the laws and treaties hereinafter referred to has [fol. 4] exercised, through the proper department of its government, sovereign power and authority over certain parcels of land and the taxation thereof for the period of twenty-five years from and after the date of issuance of the trust patents hereinafter referred to; said parcels being described as:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That in accordance with the treaties and laws of the United States pertaining to Indians, the plaintiff herein duly executed its trust patents as follows:

[fol. 5] Parcel 1. Lot Seven (7) and the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Orginal allotment No. 504, issued to Edward Beaulieu, July 21, 1902.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 2520, issued to Susan Lucas, February 6, 1908.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 3016, issued to Zennie Tibbetts or Nun do be zhe keence, January 26, 1911.

Parcel 4. Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 277, issued to Maggie Fairbanks, July 21, 1902.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 174, issued to Maggie Gagnon, February 6, 1908.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian Minnesota, Additional Allotment No. 213, issued to Susan McDougall, October 12, 1908.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 3612, issued to Isabelle Garden, December 13, 1902.

[fol. 6] said trust patents being executed in conformity with the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of January 14, 1889 (25 Stat. 642), under the terms of which the plaintiff held title to the land above described and embraced by said trust patents for the use and benefit of said Indians or in the case of his or her decease for the sole use of his or her heirs, for a period of twenty-five (25) years from the date of the issuance of said trust patents and that at the expiration of said period would convey the same by patent to said Indians or his or her heirs in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

IV

The plaintiff at all times during said trust period held said parcels of land in trust for the lawful heirs of said allottees under the terms of and subject to the conditions of said trust patents heretofore issued and heretofore referred to.

V

That said parcels of land under the laws of the United States at no time during said trust period were subject to taxation by the State of Minnesota, County of Mahnomen, or any subdivision thereof, and said County and its officials have wrongfully and illegally assessed and levied taxes on said lands, and some of said lands have been sold by said officials for taxes and bid in for the State of Minnesota, and the Auditor of said County of Mahnomen did convey some of said parcels of land to the State of Minnesota for taxes for the year 1926, and did convey parcel No. 7 above

described, to Robert Pearson for taxes for the years 1923 to 1934, inclusive.

VI

That all of the lands described in paragraph II hereof have during said twenty-five (25) year trust period mentioned herein been exempt from taxation by the State of Minnesota and any of the subdivisions thereof, and the assessment and levy of taxes thereon was and is illegal and void. That the sale of said lands for taxes was wrongful and unlawful and the tax deeds heretofore referred to are void insofar as [the] pertain to the parcels of land de- [fol. 7] scribed herein. That the acts of the defendants, severally and collectively, in the premises, are in violation of law, and the files and records of the defendant County of Mahnomen and the defendant officials showing the assessment and levy of said taxes, the non-payment thereof and the sale of said parcels of land to the defendant State of Minnesota for non-payment of said taxes, and all other entries pertaining to the taxation of said lands constitute clouds on the title to said land. That each and every act of the defendants, and each of them, affecting the title of said land, is in contravention of the laws of the United States and constitutes an unlawful interference with the plaintiff and its administration of the affairs of said allottees in the performance of its duties and obligations under the provisions of the trust patent.

VII

Plaintiff further avers that for the reasons recited in this complaint the so-called encumbrances, tax liens and tax deeds hereinbefore described and existing of record against the above described parcels of land, insofar as they affect the same, are wholly void and do not operate to convey at law or in equity any right, title, or interest in or to the said described parcels of land to the defendants herein or any of them, or give them any right to possession of said lands, and should, therefore, be set aside and held for naught by order and decree of this Honorable Court.

Plaintiff Prays Judgment:

1. That the defendants have no right, title or interest in or to said lands or lien thereon;

2. That the said so-called encumbrances, tax liens and tax deeds hereinbefore described as existing against said described parcels of land insofar as they affect the same be set aside and held for naught as being a cloud upon the title of said lands; that all of said taxes be abated and cancelled and that the assessment of said lands and the levy of taxes thereon, the sale thereof for taxes, the issuance of said tax deeds, and all other acts of the defendants and each of them in the premises pertaining to the taxation of said lands and the attachment of the lands be declared illegal and void and for naught held;

[fol. 8] 3. That the files and records of the defendant County and of the officers of the defendant County and the files and records of the defendant State of Minnesota be amended and corrected so as to remove said lands from the tax lists and records during the time set out herein and expunge therefrom all apparent liens, encumbrances and sales for taxes and to clear the title to said lands;

4. That the defendants and each of them forthwith be restrained from assessing or taxing said lands or any part thereof for the twenty-five (25) year period set out herein or making any entry or record in the files or records of the defendant State and/or County in any way affecting the title to said lands or any part thereof;

5. That the Court order and direct the defendant County of Mahnomen to refund any and all monies which have been collected for taxes levied and assessed against the parcels of land described herein during the time covered by the Trust Patents hereinbefore referred to.

6. That this Honorable Court grant such other and further relief in the premises as the circumstances may seem to require and shall be found agreeable to equity and good conscience.

United States of America, by Victor E. Anderson, United States Attorney, District of Minnesota, Saint Paul, Minnesota; by C. U. Landrum, Special Assistant U. S. Attorney, District of Minnesota, Detroit Lakes, Minnesota, Attorneys for the Plaintiff.

[File endorsement omitted.]

## In United States District Court

### Separate Answer of Defendants, State of Minnesota and County of Mahnomen and Its Officers to Plaintiff's Amended Complaint—Filed January 8, 1941

Come now the defendants, State of Minnesota and County of Mahnomen, a municipal corporation, and its officers above named, and for their joint and separate answer to the amended complaint of the plaintiff herein allege:

[fol. 9]

I

Admit the allegations contained in paragraph I of said amended complaint.

II

That the purpose of this suit as set out in said amended complaint is to enjoin, suspend or restrain the assessment, levy or collection of certain taxes upon premises described in said amended complaint imposed pursuant to the laws of the State of Minnesota; that if any or all of said premises were exempt from taxation or if any or all of said taxes were illegal, a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State of Minnesota or by application to the Board of County Commissioners of the County of Mahnomen, Minnesota and the Commissioner of Taxation of the State of Minnesota in the manner provided by the laws of the State of Minnesota; that by reason of the facts aforesaid the above entitled Court is without jurisdiction to hear and determine this cause by reason of the provisions of Subdivision 1, Section 41, Chapter 2, Title 28, U. S. C. A. 1939 Supplement of the Laws of the United States and these answering defendants respectfully pray that this suit be in all things dismissed.

III

Subject to the foregoing objection to the jurisdiction of the Court and without waiving the same these answering defendants further allege:

(A) With respect to Parcel I described in paragraphs II and III of said amended complaint that Edward Beaulieu, the allottee thereof, being then and there an adult, mixed

blood Indian competent and capable of conveying, did under date of September 26, 1938, sell and convey his said allotment to Eddie and Sidney Stephenson by a warranty deed dated on said day; that thereafter all taxes and tax liens against said premises were voluntarily paid and discharged in full; that thereby the trust claimed by the plaintiff was wholly discharged and neither said allottee or the plaintiff have any further right, title or interest in or to said premises.

[fol. 10] (B) With respect to Parcel 2 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen have erroneously and in the mistaken belief that said land was taxable attempted to assess, levy and extend taxes against the same within the twenty-five year trust period and concede that such taxes assessed, levied and extended prior to the year 1933 are void and defendants are ready and willing to cancel and abate the same.

(C) With respect to Parcel 3 described in paragraphs II and III of said amended complaint that M. L. Burns, Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, did heretofore apply in behalf of said allottee to the Auditor and Board of County Commissioners of the County of Mahnomen and the Minnesota Tax Commission for the cancellation and abatement of all taxes assessed and levied against said allotment for the year 1935 and prior years; that said application was duly granted and said taxes thereupon duly cancelled and abated thereby granting all the relief which the plaintiff now seeks.

(D) With respect to Parcel 4 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen, Minnesota, have assessed, levied and extended taxes against said premises and allege that at least an undivided one-third interest in and to said allotment was at the time of such assessment, levy and extension taxable and subject to taxation and are without information as to the taxability of the remaining interest; that if any interest in and to said premises was in fact exempt from taxation during said trust period the defendants are ready and willing to cancel and abate all taxes on such interest.

(E) With respect to Parcel 5 described in paragraphs II and III of said amended complaint that the plaintiff herein did under date of May 21, 1908, duly issue and deliver to Maggie Gagnon, the allottee thereof, a patent in fee simple conveying to said Maggie Gagnon said allotment in fee simple wholly discharged from the trust set out in its trust patent; that said land thereupon became and was subject to taxation and taxable and it became and was the duty [fol. 11] of the officials of said County of Mahnomen, Minnesota, to assess, levy and extend taxes against the same.

(F) With respect to Parcel 6 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen have erroneously and in the mistaken belief that said land was taxable attempted to assess, levy and extend taxes against the same within the twenty-five year trust period and concede that such taxes assessed, levied and extended prior to the year 1934 are void and defendants are ready and willing to cancel and abate the same.

(G) With respect to Parcel 7 described in paragraphs II and III of said amended complaint that the officials of the County of Mahnomen did assess, levy and extend taxes against said land for the years 1923 to 1934 and for subsequent years; that the taxes so levied and extended for the year 1928 and for subsequent years, being after the expiration of the twenty-five year trust period, were valid, regular and enforcible; that on June 30, 1936, one Robert Pearson purchased a State Assignment of said taxes for the years 1923 to 1925 for Thirty-Three and 22/100 Dollars and on the same day said Robert Pearson purchased a State Assignment of said taxes for the years 1926 to 1934 for One Hundred Forty-Five and 93/100 Dollars all pursuant to the provisions of Chapter 387 of the Laws of Minnesota for 1935 permitting purchase of such taxes at specified reductions; that these answering defendants allege upon information and belief that said Robert Pearson in purchasing said State Assignments acted as the agent and attorney for Isabelle Garden, the allottee of said premises, and used her money to purchase the same for the purpose of paying, adjusting and discharging her said taxes upon the basis of the reductions authorized by said Chapter 387; that these answering defendants have been and are still

willing to refund to whoever may be entitled thereto the amount paid for said State Assignments with interest and will then relevy and extend taxes for 1928 and subsequent years pursuant to the laws of the State of Minnesota.

[fol. 12] IV

Except as hereinbefore specifically admitted, qualified or denied, deny each and every allegation, matter and thing in said complaint alleged and the whole thereof.

Wherefore, these answering defendants respectfully pray that said action be dismissed for lack of jurisdiction, and, if that be denied, that said action be dismissed as to said parcels 1, 3 and 5 and that such order be entered with respect to the remaining parcels as the facts and proof may justify.

Dated November 15, 1940.

L. A. Wilson, County Attorney, Attorney for State of Minnesota and the County of Mahnomen and its officers, Mahnomen, Minnesota.

Endorsed:

Due and personal service of the within answer is hereby admitted this 30th day of November, 1940.

C. U. Landrum, Spl. Asst. U. S. Atty., Attorney for Plaintiff.

[File endorsement omitted.]

---

In United States District Court

[Title omitted]

Stipulation of Facts—Filed January 8, 1941

[fol. 13] Subject to the objections as matter of law made by the defendants to the jurisdiction of the court; their objection that the action is premature in that available remedies in the state courts have not been exhausted; their objection that the complaint does not state facts sufficient to constitute a cause of action; their objection that said complaint does not state facts sufficient to entitle the plain-

tiff to recover either for itself or in behalf of the Indian allottees involved monies paid by said allottees or others in payment of or redemption of taxes upon the premises involved.

It Is Stipulated that the facts in the above entitled matter are as follows:

As to Parcel 1:

That Trust Patent was issued to Edward Beaulieu under date of July 21, 1902, and the 25 year trust period did not expire until July 21, 1927. That on September 26, 1938, this allottee sold the land to Eddie and Sidney Stephenson. That said land was taxed prior to 1927 and that upon the application of the said Edward Beaulieu, dated September 28, 1936, a compromise agreement was entered into whereby the sum of $58.00 was paid by the said Edward Beaulieu in full settlement of all taxes up to and including the year 1935. That said application was made to the Board of County Commissioners of Mahnomen County and the Minnesota Tax Commission.

As to Parcel 3:

Upon the application of M. L. Burns, Superintendent, Consolidated Chippewa Indian Agency, in behalf of the [alottee], taxes upon this land have been abated and cancelled and this parcel of land may be dismissed from the proceeding.

[fol. 14] As to Parcel 4:

That Trust Patent was issued to Maggie Fairbanks on July 21, 1902, and the 25 year trust period did not expire until July 21, 1927. That said land was taxed prior thereto. That no valid conveyance was ever made affecting an undivided ⅔ interest therein.

As to Parcel 5:

Fee Simple patent was issued at the request of the allottee and this parcel of land may be stricken from this action.

As to Parcel 6:

That Trust Patent was issued to Susan McDougall on October 12, 1908, and the 25 year trust period did not

expire until October 12, 1933. That said land was not legally taxable until the year 1934.

As to Parcel 7:

That Trust Patent was issued to Isabelle Garden on December 13, 1902. That said land was not legally taxable prior to the year 1928. That on June 30, 1936, Robert Pearson purchased a State Assignment Certificate for the years 1923 to 1925 for the sum of $33.22, and on the same day said Robert Pearson purchased a State Assignment Certificate covering taxes for the years 1926 to 1934 for the sum of $145.93. That in so doing, the said Robert Pearson acted as agent and attorney for Isabelle Garden. That said Isabelle Garden paid other taxes on said land covering years prior to 1928.

Dated January 8, 1941.

L. A. Wilson, County Attorney, Mahnomen County, Minnesota, Attorney for State of Minnesota and County of Mahnomen and its Officials. C. U. Landrum, Special Assistant U. S. Attorney, one of the Attorneys for the Plaintiff.

[fol. 15] As to Parcel 2:

Trust patent was issued to Susan Lucas under date of February 6, 1908, and the 25 year trust period did not expire until February 6, 1933. That said land was taxed for the year 1933 and prior years.

L. A. Wilson, C. U. Landrum.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

STIPULATION AS TO AMOUNTS OF TAXES PAID ON PARCEL 7 BY INDIAN ALLOTTEE—Filed April 8, 1941

It Is Hereby Stipulated And Agreed by and between the parties hereto, the County of Mahnomen, by and through L. A. Wilson, County Attorney, and the United States of America, by and through D. N. Lindeman, Special Attor-

ney, that as to Parcel 7 herein, the Indian Allottee paid the following amounts of taxes on the dates set forth:

| Year for which tax levied | Date Paid | Amount Paid |
|---|---|---|
| 1911 | August 24, 1917 | $35.85 |
| 1912 | August 24, 1917 | 34.48 |
| 1913 | August 24, 1917 | 26.21 |
| 1914 | August 24, 1917 | 28.38 |
| 1915 | August 24, 1917 | 25.69 |
| 1916 | December 24, 1917 | 28.64 |
| 1917 | (May 24, 1918 | 14.95 |
| | (October 31, 1918 | 14.95 |
| 1918 | (May 17, 1919 | 15.91 |
| | (September 27, 1919 | 15.92 |
| 1919 | May 24, 1920 | 43.38 |
| 1920 | February 17, 1922 | 63.17 |
| 1921 | (May 2, 1922 | 29.22 |
| | (October 7, 1922 | 29.22 |
| 1922 | June 30, 1936 | 53.23 |
| 1923 | June 30, 1936 | 63.39 |
| 1924 | June 30, 1936 | 34.81 |
| 1925 | June 30, 1936 | 40.12 |
| 1926 | June 30, 1936 | 34.75 |
| 1927 | June 30, 1936 | 48.62 |

It is further stipulated and agreed by and between the parties hereto that the records of the District Court, State [fol. 16] of Minnesota, Fourteenth Judicial District, County of Mahnomen, show that an action therein, entitled Isabelle Garden, Plaintiff vs. County of Mahnomen, was commenced in said court on February —, 1923, seeking to recover from the defendant County of Mahnomen moneys paid by said plaintiff to said defendant for taxes levied against the E½SE¼ of Section 5, Township 144 North, Range 41 West (Parcel 7 in the above entitled proceeding) for the years 1911 to 1921, both inclusive: That thereafter a demurrer was interposed to the amended complaint filed therein, said demurrer being on the ground that said complaint failed to state a cause of action and that said demurrer was sustained by order of the said State District Court dated March 11, 1927. The record fails to disclose that any further action is dais proceeding was taken and further shows that said action was brought in behalf of said plaintiff under the laws of the State of Minnesota by A. J. Powers, Attorney at Law, Mahnomen, Minnesota, and that the United States was not a party to said action and had no knowledge thereof.

That said taxes for the years 1922 to 1927, both inclusive, were paid and discharged by the said allottee by the purchase by her by State Assignment Certificate No. 76 in the amount of $33.22 covering the taxes for the years 1922 to 1925, both inclusive, and State Assignment Certificate No. 232 in the amount of $145.93 covering taxes for the years 1926 to 1934, both inclusive, all pursuant to Chapter 387 Laws of Minnesota for 1935, that the aggregate for said State Assignment Certificates is the sum of $179.15 and that the valid taxes for the years 1928 to 1934, both inclusive, thereby discharged amounted to $245.57 without penalty or interest and that therefore said allottee affected a saving of $66.42 plus penalty and interest by the purchase of said State Tax Assignment Certificates.

Dated this 8th day of April, 1941.

L. A. Wilson, County Attorney, Mahnomen County, Minnesota. D. N. Lindeman, Special Attorney, United States of [Attorney].

[fol. 17] [File endorsement omitted.]

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In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed July 15, 1941

The above entitled matter came before the Court on the 7th day of January, 1941, at the Court Room in the City of Fergus Falls, Minnesota, at a regular term of this Court.

C. U. Landrum, Special Assistant United States Attorney, appeared in behalf of the plaintiff, and L. A. Wilson, Esq., County Attorney in and for the County of Mahnomen, State of Minnesota, appeared in behalf of the defendants with the exception of the defendant Robert Pearson, who did not appear in person or by counsel.

The matter was submitted to the Court on a stipulation as to facts and briefs were later filed by both parties. On consideration thereof, together with all the files and records

herein, the Court makes and files the following as its Findings of Fact and Conclusions of Law, to-wit:

## Findings of Fact

### I

That the defendant County of Mahnomen is and at all times herein mentioned was a municipal corporation, duly [fol. 18] organized and existing under and by virtue of the laws of the State of Minnesota as a County in said State. That Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, John J. Spaeth, Adolph J. Paul, Sigvald Tveit, Camilla Hardy are citizens of and residents of and are officials of said County of Mahnomen, now holding the official positions designated after their names, respectively, and Robert Pearson is a citizen of and resident of said County of Mahnomen, and that this action is brought against said officials in their official capacity and against Robert Pearson individually.

### II

That at all times herein mentioned said plaintiff by reason of the laws and treaties hereinafter referred to has exercised, through the proper department of its government, sovereign power and authority over certain parcels of land and the taxation thereof for the period of twenty-five years from and after the date of issuance of the trust patents hereinafter referred to; said parcels being described as:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

[fol. 19] Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That in accordance with the treaties and laws of the United States pertaining to Indians, the plaintiff herein duly executed its trust patents as follows:

Parcel 1. Lot Seven (7) and the Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 504, issued to Edward Beaulieu, July 21, 1902.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 2520, issued to Susan Lucas, February 6, 1908.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23) Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 3016, issued to Zennie Tibbetts or Nun de be zhe keence, January 26, 1911.

Parcel 4. Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian,

Minnesota, Original Allotment No. 277, issued to Maggie Fairbanks, July 21, 1902.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one [fol. 20] (41) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 174, issued to Maggie Gagnon, February 6, 1908.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, Minnesota, Additional Allotment No. 213, issued to Susan McDougall, October 12, 1908.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, Minnesota, Original Allotment No. 3612, issued to Isabelle Garden, December 13, 1902. said trust patents being executed in conformity with the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of January 14, 1889 (25 Stat. 642), under the terms of which the plaintiff held title to the land above described and embraced in the trust patents covering parcels 2, 4, 6 and 7 for the use and benefit of said Indians or in the case of his or her decease for the sole use of his or her heirs, for a period of twenty-five (25) years from the date of issuance of said trust patents and that at the expiration of said period would convey the same by patent to said Indians or his or her heirs in fee, discharged of said trust and free of all charge or encumbrance whatsoever.

IV

The plaintiff at all times during said trust period held parcels of land herein referred to as numbers 2, 4, 6 and 7 in trust for the lawful heirs of said allottees under the terms of and subject to the conditions of said trust patents heretofore issued and heretofore referred to.

V

That as to Parcel 1, said land was [taxes] prior to 1927. Under date of September 23, 1936, a compromise agree-

ment was entered into between Edward Beaulieu, allottee, and Mahnomen County, whereby all taxes up to and in- [fol. 21] cluding the year 1935 were settled and compromised for the sum of $58.00, which was less than the taxes levied and assessed against said land after the expiration of the trust period.

VI

That as to Parcel No. 3, all taxes have been abated and cancelled upon application.

VII

That as to Parcel No. 5, a fee simple patent was issued upon application of the allottee.

VIII

That as to Parcel 7, the Indian allottee thereof, namely Isabelle Garden, paid taxes as follows:

| Year for which tax levied | Date Paid | Amount Paid |
|---|---|---|
| 1911 | August 24, 1917 | $35.85 |
| 1912 | August 24, 1917 | 34.48 |
| 1913 | August 24, 1917 | 26.21 |
| 1914 | August 24, 1917 | 28.38 |
| 1915 | August 24, 1917 | 25.69 |
| 1916 | December 24, 1917 | 28.64 |
| 1917 | (May 24, 1918 | 14.95 |
| | (October 31, 1918 | 14.95 |
| 1918 | (May 17, 1919 | 15.91 |
| | (September 27, 1919 | 15.92 |
| 1919 | May 24, 1920 | 43.38 |
| 1920 | February 17, 1922 | 63.17 |
| 1921 | (May 2, 1922 | 29.22 |
| | (October 7, 1922 | 29.22 |
| 1922 | June 30, 1936 | 53.23 |
| 1923 | June 30, 1936 | 63.39 |
| 1924 | June 30, 1936 | 34.81 |
| 1925 | June 30, 1936 | 40.12 |
| 1926 | June 30, 1936 | 34.75 |
| 1927 | June 30, 1936 | 48.62 |

that in February 1923, the said Isabelle Garden commenced an action in the state district court of the County of Mahnomen entitled Isabelle Garden, plaintiff vs. County of Mahnomen, defendant, seeking to recover from the defendant County of Mahnomen moneys paid by said plain-

tiff to said defendant for taxes levied against the E½ SE¼ [fol. 22] of Section 5, Township 144 North, Range 41 West (Parcel 7 above described) for the years 1911 to 1921, both inclusive; that thereafter a demurrer was interposed; that said demurrer was sustained by order of the said State District Court dated March 11, 1927; that no further action in that proceeding was had or taken; that the United States was not a party to said action and was not bound thereby; that taxes levied and assessed on this land for the years subsequent to 1921 culminated in a tax certificate and, subsequently, State Assignment Certificate No. 76 was issued to Isabelle Garden by the State of Minnesota for the sum of $33.22 covering the years 1922 to 1925, both inclusive; that State Assignment Certificate No. 232, covering taxes levied and assessed for the years 1926 to 1934, both inclusive, was issued to Isabelle Garden in consideration of a Judgment of $145.93.

IX

That said Isabelle Garden is a mixed blood Indian and was born in the month of July, 1893.

CONCLUSIONS OF LAW

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this action, and this action is brought by the real party in interest.

II

That this action be dismissed as to those parcels of land described in the complaint herein as Parcels 1, 3 and 5.

III

That this action be dismissed as to the defendant State of Minnesota.

IV

That the taxes levied and assessed as to each of the parcels of land in the County of Mahnomen, State of Minnesota, listed hereafter, be abated and cancelled prior to the date noted after each description, which date designates the expiration of the trust period of the patent granted by the plaintiff.

[fol. 23] Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, February 6, 1933.

Parcel 4. An undivided two-thirds (⅔) interest in and to: Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, July 21, 1927.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼) and the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, October 12, 1933.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927.

V.

That the assessment of the lands herein referred to as parcels 2, 4, 6 and 7 and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the taxation of said lands during said periods, are declared illegal and void.

VI.

That the files and records of the County of Mahnomen and the offices of the officials of said County be amended and corrected so as to remove the lands herein referred to as parcels 2, 4, 6 and 7, from the tax lists and records during the years covered by the said trust periods and all apparent liens and incumbrances, sales and forfeitures for taxes during said period be expunged from the files and records of said county.

VII.

That the plaintiff have judgment against the defendant, County of Mahnomen, for any and all monies collected [fol. 24] for taxes levied and assessed against the parcel of land described herein as Parcel No. 7, covering the years 1911 to 1921, both inclusive, in the total sum of $405.97.

Let Judgment Be Entered Accordingly.
Dated this 9th day of July, 1941.
By the Court:
George F. Sullivan, United States District Judge.

[File endorsement omitted.]

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In United States District Court

No. 79. Civil

United States of America, Plaintiff,

vs.

State of Minnesota; County of Becker, a municipal corporation, et al., Defendants.

No. 78. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Mahnomen, a municipal corporation, et al., Defendants

No. 80. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Clearwater, a municipal corporation, et al., Defendants.

Opinion—Filed May 5, 1941

These suits involve the questions:

(1) The right of the United States, after the expiration of the trust period, to maintain a suit to recover taxes

paid by the allottee during the twenty-five year trust period, and clear the title of said lands from all liens created by taxes assessed, but not paid, against the same, during said trust period;

(2) The question as to whether or not the statute of limitations applies;

(3) Whether the United States must exhaust the administrative remedies provided for in the State laws;

[fol. 25] (4) The right of the United States to maintain a suit after the expiration of the trust period to recover taxes assessed against an allottee's land during the trust period, but paid or compromised by said allottee after the expiration of the trust period;

(5) The right of the plaintiff to injunctive relief herein.

The lands involved in said actions are lands which were allotted to mixed-blood Chippewa Indians, and covering which lands trust patents have been issued. The trust patents and laws pursuant to which they were issued provide that the United States will convey the lands at the expiration of the twenty-five year trust period to the Indian allottee, or his or her heirs "free of all charge or encumbrance whatsoever."

The complaints allege that the lands at all times referred to in the complaints were not subject to taxation, since said taxes were levied and imposed upon said lands during the said twenty-five year period, but that taxes were wrongfully levied and assessed against the lands during said period. The relief asked by the plaintiff is for a judgment and decree that the defendants have no right, title or interest in or to said lands or lien thereon; that the so-called encumbrances, tax liens and tax deeds described in the complaint are void and of no effect whatsoever, and that the same be set aside; that all of said taxes for said twenty-five year period be abated and cancelled, and that the assessment of said lands and the levy of taxes thereon, sale thereof for taxes, the issuance of said tax deeds, and all other acts of the defendants pertaining to the taxation of said lands, and the attachment of said lands for said twenty-five year period, be declared illegal; that the files and records in all county offices of said counties reflecting the acts of any of the officers of said counties in the imposition of

taxes upon said lands for said twenty-five year period be declared void; that the defendants be restrained from assessing or taxing said lands, or any part thereof, for the twenty-five year period, or making any entry or record in the files or records of the defendant State and/or County in any way affecting the title of said lands; that the Court [fol. 26] order and direct the defendant counties to refund any and all moneys which have been collected for taxes levied and assessed against the parcels of land described in the complaints during the times covered by the trust patents.

The defendants in their answer contend that this Court is without jurisdiction; that the United States has failed to exhaust its possible administrative remedies; that the complaints fail to state a cause of action; that the United States is without capacity to bring the present actions; that taxes voluntarily paid by emancipated Indians may not be recovered; that recovery of the taxes is barred by the statute of limitations.

The United States, at different times subsequent to the passage of the General Allotment Act of February 8, 1887 (24 Stat. 388) and the Nelson Act of January 14, 1889 (25 Stat. 642), allotted the several parcels set out in the complaints herein to the named mixed-blood Chippewa Indians in the White Earth Indian Reservation of Minnesota.

The patents issued were the so-called trust patents, whereby the land, for a period of twenty-five years, was held in trust by the United States for the sole use and benefit of said Indians, and in case of their death, for the sole use and benefit of their heirs at law, and at the expiration of the trust period the government agreed to convey said lands to said Indians or their heirs by a patent in fee "discharged of said trust and free of all charges or encumbrances whatsoever • • • ."

It is settled law that these trust patents created a vested right in the allottees, or their heirs, to receive the lands at the end of the twenty-five year trust period free from state and local taxation. Morrow vs. United States, 8th Cir., 243 Fed. 854; Choate vs. Trapp, 224 U. S. 665; United States vs. Spaeth, 24 Fed. Supp. 465.

While it is conceded by the defendants that any taxes imposed upon the Indians' lands during the trust period

are void, they argue that these suits, not having been instituted until after the expiration of the trust period, and then by the United States rather than the Indians, cannot be maintained.

[fol. 27] While the United States has no pecuniary interest in the result of this litigation, it was, however, a trustee for said Indians during said trust period. It was its duty to preserve the property allotted to the respective Indians free and clear from any encumbrance whatsoever. The imposition of taxes by the County upon Indian lands violated the terms of the General Allotment Act of February 8, 1887, and the conditions of the trust patent held for the benefit of the Indians by the government.

The defendants argue that the United States is under no duty and has no right to maintain these suits. This contention cannot be sustained. The government, under the law and the terms and conditions of the trust patent, was required to deliver patents to the Indians at the end of twenty-five years "free and clear of any encumbrance." It was the obligation of the government to do this. As trustee it was bound to protect the property of the Indians from unjust imposition of taxes upon their lands. Congress may, if it thinks fit, emancipate the Indians from their wardship, wholly or partially. United States vs. Waller, et al., 243 U. S. 452-9. It is claimed that under the Nelson Act of January 14, 1889, and the Clapp Act of June 21, 1906 (34 Stat. 325-353) the government has emancipated the Indian. That may be conceded, but the government cannot escape its legal and moral duty to the Indian requiring it to deliver to him the lands free and clear of encumbrances. See United States vs. Minnesota, 270 U. S. 181. Clearly the government, in the performance of its duty as a trustee of the property of the Indian and upon whom the obligation is imposed by statute and by the covenants of the trust patent, is required to fully comply with the directions of its trusteeship, and it clearly has the duty, having failed during the trust period, to see that the trust property is free from encumbrances created during the trust period and to undo the wrongs which it failed to prevent. Board of Commissioners of Tulsa County, Oklahoma vs. United States, 94 Fed. (2nd) 450-452.

The statute of limitations, limiting the time within which actions may be brought, has no application to the United

States when suing to enforce a public right or to protect the interests of its Indian wards. This principle of law [fol. 28] seems to be firmly established by the decision in United States vs. Minnesota, supra, page 196. Compare United States vs. Thompson, 98 U. S. 486; United States vs. Nashville, Chattanooga & St. Louis Railway Company, 118 U. S. 120-126; United States vs. Summerlin, 310 U. S. 414.

The argument that the United States must comply with the provisions of the State statutes for the recovery or cancellation of invalid State taxes is without merit. A refusal to comply with the State statute by the United States does not bar it from bringing these actions. Board of County Commissioners of Osage County, Oklahoma, et al. vs. United States, 64 Fed. (2nd) 775, and cases cited.

It appears from the stipulation of facts that some of the taxes in controversy were assessed upon the lands and paid subsequent to the date of the expiration of the twenty-five year trust period. A recovery of such taxes cannot be had. Neither is the plaintiff entitled to any relief as to any liens which may have been created against said lands because of said taxes. The trust period had expired at the time of the assessment of said taxes. The government at that time had fully performed the conditions of the trust and had theretofore delivered the property to the Indian "free and clear of all encumbrances" as to such taxes.

The stipulation further recites that in some instances taxes were assessed and extended upon the tax books of the County against certain Indian lands before and after the expiration of the trust period, and further, that the Indians, after the expiration of the trust period, paid or compromised all of such taxes, those assessed and levied before the expiration of the trust period, and those assessed and levied subsequent to the expiration of the trust period, in a lump sum. The government now seeks recovery of such payments so made by the Indians in compromise and settlement of said taxes.

Even though it is held that the government owed the Indian the duty of faithfully and fully performing the obligations of its trust, it does not follow that where the allottee after the expiration of the trust period voluntarily [fol. 29] makes a settlement, either by payment or compromise with the wrong-doer, the taxing authorities, the

government may recover from the county the payments so made by the allottee. There must be some limitation as to when the government is relieved of its stewardship.

The so-called Clapp Amendment (Act of June 21, 1906, 34 Stat. 325-353) emancipated the Indian to the extent that he might sell and transfer, and deal with his land, as he saw fit.

The trust period in these last-mentioned instances had expired. The land affected thereby had been freed from the terms and conditions of the trust, and the inhibition against local taxing authorities imposing taxes thereon. The Indian was then as free to deal with his lands as any white man would be to deal with lands which he owned, and the lands of both white and Indian were subject to the imposition of the same taxes. The Indian was a citizen of the United States, entitled to all the rights, privileges and immunities as such citizen. At the time he made the compromise or settlement of taxes against his property he had the right to assert in his own name, in court or elsewhere, such claims as he cared to make, and defend those made against him. See United States vs. Richards, (8th Cir.) 27 Fed. (2nd) 284-286. The allottee had the right, if he saw fit, to await the action of the government, or to request it to carry out the duties of the trust and clear his land from the liens, based on illegal taxes against it, or he could, as the absolute owner of the fee of said land, take such other steps to remove the clouds upon the title of his land as were available to him.

The Supreme Court of Minnesota has recognized the right of a mixed-blood Chippewa Indian of the White Earth Indian Reservation to maintain a suit against a county to recover taxes illegally imposed upon his allotment during the trust period. See Warren vs. Mahnomen County, 257 N. W. 77. While the allottee had the right to have the illegal lien disposed of by action of the United States, he elected to pursue a remedy which was available to him personally. The allottee has made his election and has compromised and settled the tax claims. The government should not, at this time, be permitted to overrule [fol. 30] the voluntary action and election of the allottee to proceed in a manner which he deemed wise and prudent.

In Ward, et al., vs. Board of County Commissioners of Love County, Oklahoma, 253 U. S. 17, in considering a

question involving payment of taxes illegally assessed against the lands of an Indian, the Court said (page 22):

"We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. • • • "

The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary.

Indian lands held by the United States in trust for the benefit of the Indians are exclusively under the jurisdiction of the federal government, and it has full power to legislate with respect thereto. This right cannot be interfered with by the State authorities. See United States vs. Rickert, 188 U. S. 432, 438.

The provision of Section 41 (1), 28 U. S. C. A. denying jurisdiction to district courts

"of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law • • • "

is not applicable. The purpose of these suits does not question the type of tax. It does question the right of the officers of the State, and its subdivisions and their officers, to impose any tax on the property of Indians, and to interfere with the power of the federal government in respect to Indian lands during the trust period. The purpose of the suit is to enjoin defendants' interference with the Indians' lands.

This Court has no jurisdiction of a suit against the State, and these proceedings, as against the State, are dismissed. [fol. 31] The plaintiff in each case is entitled to judgment against the County:

(1) for the aggregate of the taxes imposed and collected by that County illegally, as determined in this Memorandum, without interest; and that all records of said County based upon said illegal taxes be declared null and void;

(2) for such mandatory relief against the individual defendants as is prayed for in the complaint, insofar as may be in accord with this Memorandum;

(3) that the defendant County and its proper taxing officers be restrained from assessing or taxing said lands during the twenty-five year trust period, and from making any entry or record based on taxes during said trust in the files or records of said County affecting the title to said lands or any part thereof;

(4) for the costs and disbursements of this action.

Findings of fact and conclusions of law in accordance herewith may be presented upon notice.

Dated this 3rd day of May, 1941.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 32] SUPPLEMENTAL MEMORANDUM—Filed May 16, 1941

The Memorandum heretofore filed in the above entitled actions is hereby supplemented and clarified, particularly with reference to the case of the United States of America, Plaintiff, vs. State of Minnesota; County of Mahnomen, a municipal corporation, et al., Civil No. 78, as follows:

Re: Parcel No. 7, Mahnomen County:

The above tract was placed on the tax rolls of Mahnomen County in the year 1911, and so far as we are here concerned, remained on the tax rolls of said County all during the twenty-five year trust period, which expired in the year 1928.

Taxes for the years 1911 to 1921 were paid by the allottee to the County, prior to the expiration of the trust period. In 1923 the allottee commenced a suit in the state court against said County to recover the taxes paid by her theretofore. A demurrer was interposed to the complaint. This demurrer was sustained by the State District Court and no

appeal was taken therefrom. This state court case cannot be regarded as res adjudicata in this proceeding. The United States was not a party to the state court suit, and clearly, under the rule in the case of Warren vs. County of Mahnomen, 257 N. W. 77, decided subsequent to said state court proceeding, in the year 1934, the Indian had the right to maintain a suit against the County to recover taxes illegally imposed upon his allotment during the trust period.

The government in this case is entitled to recover all taxes paid by the allottee during the trust period, being the taxes for the years 1911 to 1921, both inclusive. The taxes on this parcel for the years 1922 to 1927, both inclusive, and for subsequent years, were disposed of in the year 1936 by the voluntary action of the "emancipated" Indian through her purchase of state assignment certificates. As to the money which the Indian paid as and for these assignment certificates, or the taxes represented in [fol. 33] such assignment certificates, the government is not entitled to recover.

Dated this 15th day of May, 1941.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

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In United States District Court

No. 78. Civil.

United States of America, Plaintiff,

vs.

State of Minnesota; County of Mahnomen, a municipal corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, and John Adams, as County Commissioners of said County, and their successors in office; John J. Spaeth as Auditor of said County and his successors in office; Adolph J. Paul as Treasurer of said County and his successors in office; Sigvald Tveit as Register of Deeds of said County and his successors in office; Camilla Hardy as Clerk of Court of said County and her successors in office, and Robert Pearson, Defendants.

JUDGMENT—Filed March 7, 1942

The above entitled action having been brought to a trial by the Court, and the Court having made and filed its findings of fact and conclusions of law and directed judgment in accordance therewith and a motion by defendant County of Mahnomen and all its officers for amended findings of fact and conclusions of law or a new trial having been desired,

Now on motion of C. U. Landrum, Special Assistant United States Attorney, as attorney for plaintiff,

It Is Adjudged:

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this [fol. 34] action, and this action is brought by the real party in interest.

II

That this action be and hereby is dismissed as to those parcels of land described in the complaint herein as Parcels 1, 3 and 5, more particularly described as follows:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3) Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23) Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian.

Parcel 5. Lot One (1) of Section Ten (10), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

III

That this action be and hereby is dismissed as to the defendant State of Minnesota.

IV

That the taxes levied and assessed as to each of the parcels of land in the County of Mahnomen, State of Min-

nesota, listed hereafter, be abated and cancelled prior to the date noted after each description, which date designates the expiration of the trust period of the patent granted by the plaintiff.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian, February 6, 1933.

Parcel 4. An undivided two-thirds (⅔) interest in and to: Lots One (1) and Two (2) of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian, July 21, 1927.

[fol. 35] Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼) and the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian, October 12, 1933.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927.

V

That the assessment of the lands herein referred to as parcels 2, 4, 6, and 7 and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the taxation of said lands during said periods, are declared illegal and void.

VI

That the files and records of the County of Mahnomen and the offices of the officials of said County be amended and corrected so as to remove the lands herein referred to as parcels 2, 4, 6 and 7, from the tax lists and records during the years covered by the said trust periods and all apparent liens and incumbrances, sales and forfeitures for

taxes during said period be expunged from the files and records of said county.

VII

That the plaintiff have judgment against the defendant, County of Mahnomen, for any and all monies collected for taxes levied and assessed against the parcel of land described herein as Parcel No. 7, covering the years 1911 to 1921, both inclusive, in the total sum of $405.97 without interest thereon, and the Clerk of this Court is hereby directed to forthwith docket said judgment in the judgment lien docket of his office.

[fol. 36] Dated at St. Paul, Minnesota, this 5th day of March, 1942.

By the Court:

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

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In United States District Court

Motion of Defendants for Amended Findings, Conclusions of Law, etc., and in the Event That Be Denied, For a New Trial—Filed March 28, 1942.

[Title omitted]

To the United States of America, Plaintiff in the Action Above Entitled; and to Victor E. Anderson, United States Attorney, District of Minnesota, and C. U. Landrum, Special Assistant United States Attorney, District of Minnesota, Its Attorneys:

Come now the defendants, County of Mahnomen, and its officials above named, and upon the grounds that the present findings of fact are in part contrary to the evidence and to the law and to some extent contain conclusions of law and that the present conclusions of law are in part [fol. 37] without support in the findings and contrary to law, respectfully move the court:

First

For an order setting aside and vacating the order for judgment and the judgment and decree entered in the above

entitled action in favor of plaintiff and against said defendants, pursuant to the findings of fact and conclusions of law made and filed on March 5, 1941.

Second

For an order amending such findings of fact and conclusions of law, and order for judgment in the following respects, to-wit:

As to the findings of fact:

(a) By striking therefrom paragraphs II, III and IV and inserting in lieu thereof the following paragraph:

II

That pursuant to the Act of Congress approved February 8, 1887 (24 Stat. 388-9) and the Act of Congress approved January 14, 1889 (25 Stat. 642), the plaintiff herein duly executed on the dates set forth, to the allottees named, trust patents with respect to the hereinafter described parcels of land as follows:

Parcel 1. Lot Seven (7) and Southwest Quarter of the Northeast Quarter (SW¼ NE¼) of Section Three (3), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on July 21, 1902 to Edward Beaulieu, by Original Allotment No. 504.

Parcel 2. The South Half of the Southwest Quarter (S½ SW¼) of Section Twenty-one (21), Township One Hundred Forty-five (145) North, Range Forty-two (42) West of the Fifth Principal Meridian. Trust patent issued on February 6, 1908 to Susan Lucas, by Additional Allotment No. 2520.

Parcel 3. The Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Twenty-three (23), Township One Hundred Forty-three (143) North, Range Thirty-nine [fol. 38] (39) West of the Fifth Principal Meridian. Trust patent issued on January 26, 1911 to Zennie Tibbetts or Nun de be zhe keence, by Additional Allotment No. 3016.

Parcel 4. Lots One (1) and Two (2), of Section Thirty-three (33), Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian.

Trust patent issued on July 21, 1902 to Maggie Fairbanks, by Original Allotment No. 277.

Parcel 5. Lot One (1) of Section Ten (10) Township One Hundred Forty-six (146) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on February 6, 1908 to Maggie Gagnon, by Additional Allotment No. 174.

Parcel 6. The Southeast Quarter of the Southeast Quarter (SE¼ SE¼); the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirteen (13), Township One Hundred Forty-three (143) North, Range Thirty-nine (39) West of the Fifth Principal Meridian. Trust patent issued on October 12, 1908 to Susan McDougall, by Additional Allotment No. 213.

Parcel 7. The East Half of the Southeast Quarter (E½ SE¼) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian. Trust patent issued on December 13, 1902 to Isabelle Garden, by Original Allotment No. 3612.

(b) By amplifying paragraph IX to read as follows:

III

That said Isabelle Garden is a mixed-blood Indian of the White Earth Reservation in Minnesota and was born in the month of July, 1893.

(c) By adding thereto the following paragraph:

IV

That as to parcel 4, said land was taxed prior to July 21, 1927; that no valid conveyance was ever made affecting the undivided two-thirds interest therein.

(d) By striking from paragraph VIII the following words:

[fol. 39] "and was not bound thereby"
so that the clause wherein that phrase appears shall read as follows:

"that the United States was not a party to said action;".

That the conclusions of law be amended as follows:

(a) By striking paragraph I thereof and inserting in lieu thereof the following:

I

That the plaintiff, the United States of America, has such interest in the subject matter as will support this action to the extent that it seeks the removal of encumbrances with respect to parcels 2, 6 and a two-thirds interest in parcel 4, and in that respect this action is brought by the real party in interest.

(b) By amplifying paragraph II thereof to read as follows:

II

That this action be dismissed as to those parcels of land described in the complaint herein as parcels 1, 3, 5, and a one-third interest in parcel 4.

(c) By striking from paragraph IV that part thereof with reference to parcel 7, which reads as follows:

"Parcel 7. The East Half of the Southeast Quarter ($E^1/_2$ $SE^1/_4$) of Section Five (5), Township One Hundred Forty-four (144) North, Range Forty-one (41) West of the Fifth Principal Meridian, December 13, 1927."

(d) By striking paragraph V and inserting in lieu thereof the following:

V

That the assessment of the lands hereinafter referred to as parcels 2 and 6, and a two-thirds interest in parcel 4, and the levy of taxes thereon, the sales for taxes, the issuance of any state assignment certificates, the issuance and service of any notices of expiration of redemption, any forfeitures for non-payment of said taxes, and all other acts of the defendants and each of them, pertaining to the [fol. 40] taxation of said parcels during said periods, are illegal and void.

(e) By striking paragraph VI and inserting in lieu thereof the following:

VI

That the files and records of the County of Mahnomen in the offices of the officials of said County be amended and corrected so as to remove said parcels 2 and 6 and a two-thirds interest in parcel 4 from the tax lists and records during the years covered by the said trust periods and all apparent liens and encumbrances, sales and forfeitures for taxes during said period be expunged from the files and records of said county to the extent that the defendant county and its officials named herein have the authority to expunge the same.

(f) By adding thereto the following paragraphs:

VII

That Isabelle Garden, allottee of parcel 7 herein, as an adult mixed-blood Indian of the White Earth Reservation in Minnesota, and her said allotment were subject to the so-called Clapp Amendments of June 21, 1906 (34 Stat. 325, 353) and March 1, 1907 (34 Stat. 1015, 1034).

VIII

That the taxes paid by said Isabelle Garden were voluntarily paid and may not be recovered.

IX

That the state court order in the action brought by Isabelle Garden against the said County of Mahnomen is res adjudicata between the said parties thereto.

X

That the state court order in the action brought by Isabelle Garden against the said County of Mahnomen is binding upon the plaintiff herein and may not be collaterally attacked in this proceeding.

(g) By striking paragraph VII and inserting in lieu thereof the following paragraphs:

[fol. 41]

XI

That the plaintiff, the United States of America, has no interest in the sums paid by said Isabelle Garden as taxes

herein involved, and said plaintiff is therefore not the real party in interest and is not entitled to bring this action for the recovery thereof.

XII

That the taxes assessed and levied with respect to the allotment of Isabelle Garden the payments of which are specified in the findings herein are valid.

XIII

That this action be dismissed as to parcel 7.

Third

In the event that the foregoing motion for amended findings and conclusions be denied, said defendants move that the case be reopened for additional testimony, or for a new trial, for the purpose of presenting evidence on the following points which are deemed to be of controlling importance:

1. The relationship between the organization of Mahnomen County and the passage of the Clapp Amendments.

2. The need for payment of taxes by Indians to make available the benefits accruing from county organization.

3. The factual background in response to which the Clapp Amendments were enacted and their practical construction.

4. The issuance of a fee simple patent on December 8, 1919 to Isabelle Garden by the President of the United States as demonstrating the policy of the Department of Interior with respect to adult mixed-blood Indians of the White Earth Reservation.

This motion is made upon the ground that this proceeding is a test case in two respects: first, that it will control the disposition of many other cases involving allottees who have voluntarily paid such taxes; second, that in this proceeding the Federal Government for the first time seeks to recover taxes voluntarily paid by emancipated Indians with respect [fol. 42] to allotments freed under the Clapp Amendments from governmental restriction. In a case of such importance, justice would require that the court have before it all material evidence bearing upon the issues.

As finally submitted, the only contested issue in this case involves the recovery of taxes paid by Isabelle Garden, an individual, on parcel 7. It, therefore, resolves itself into an action by the United States to recover taxes paid by an individual. The complaint tendered no such issue. Had it done so, these defendants would have been apprised of what was sought and would have been in position to prepare their case accordingly. It further appears that said Isabelle Garden paid her taxes voluntarily and, further, that she brought an action in a state court to recover them and lost. She, of course, is bound by her action. Since the United States brings this suit in her behalf, it must likewise be bound and may not recover in this action.

These defendants are prepared to show by competent evidence that there was a close relationship between the organization of the County of Mahnomen on January 1, 1907 and the enactment of the Clapp Amendments on June 21, 1906 and March 1, 1907. But for the enactment of said amendments, the County of Mahnomen for lack of taxable property could not have been organized. It is wholly within the White Earth Reservation and consists of 16 of the 36 townships comprising said Reservation. The Indian allottees of said Reservation who came from many parts of the state had already adopted the habits and customs of civilized life and were not in a savage or semi-savage state as was true of Indians on many other reservations. Most of them were mixed-bloods. At the time of the organization of the county, the Indian allottees were in a majority and controlled its organization. The first judge of probate, the first county attorney, and other officials were Indian allottees. The area of the county at that time was undeveloped, largely without roads, schools, and public buildings. At the time of the passage of the Clapp Amendments, the said Indian allottees were, as a class, competent and capable of managing their own affairs. Before the enactment of said amendments, all allotments were non-taxable as a matter of law. After their enactment, the question became one of fact as to each allotment, which question had to be passed [fol. 43] upon by the proper county officials in the first instance. Many allottees elected to pay and did pay taxes. The money so paid was used to build roads, schools, and public buildings and for relief. The allottees, in common with others, needed such roads, schools, and relief and

shared in the benefits. But for their contributions, it would have been impossible to provide such benefits.

These defendants would show also that the Clapp Amendments have been given a practical construction by local and federal officials, whereby all supervision and control over adult mixed-blood Indians and their allotments was removed from the Federal Government. Such allottees have also been recognized as having full power of management and control of their said allotments. This has included the right of said allottees to pay taxes on their said allotments. Such allotments but for their consent were not taxable. They have made such payments voluntarily. In the absence of consent, they would have a choice of remedies—

1. They could avail themselves of all existing remedies provided under state law,

2. They could call upon the United States to bring legal action to cancel and remove the tax liens on their allotments.

That such allottees have generally availed themselves of the rights given by state laws is shown by the records of the county in which are found numerous applications by them for abatement and refund of taxes. A great many of such applications have been granted. This practical construction is confirmed by the action of the Secretary of Interior in causing a patent in fee simple to be issued to said Isabelle Garden on December 8, 1919. So far as the plaintiff is concerned, said patent is unrevoked and must stand as a valid act.

Dated March 10, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General. Attorneys for Defendants County of Mahnomen and its officials above named, 102 State Capitol, St. Paul, Minne-[fol. 44] sota; L. A. Wilson, County Attorney for the County of Mahnomen and attorney for its officials above named. Mahnomen, Minnesota.

Endorsed: Due service of the within —— and Motion for Amended Findings, Conclusions of Law and Order for Judgment, and in the Event that be denied, for a New Trial, is hereby admitted this 12" day of March, 1942.

C. U. Landrum, Spl. Asst. U. S. Attorney, Attorney for Plaintiff.

[File endorsement omitted.]

In United States District Court

Order Denying Motion for Amended Findings, Conclusions, etc., or for a New Trial—March 28, 1942

The above entitled matter came on for hearing before the undersigned, one of the judges of the above named Court, on the 21st day of March, 1942, in his chambers in the Federal Courts Building, in St. Paul, Minnesota, upon the motion of the defendants County of Mahnomen and its officials above named, for an order setting aside and vacating the order for judgment and judgment and decree herein, and for an order amending the findings of fact and conclusions of law and order for judgment herein, and, in the event the foregoing motion be denied, for a new trial. By stipulation of parties, this motion was submitted to the Court upon the same arguments and briefs made on a previous motion, and without any further argument or briefs.

J. A. A. Burnquist, Attorney General for the State of Minnesota, George B. Sjoselius, Assistant Attorney General for the State of Minnesota, and L. A. Wilson, County Attorney for the County of Mahnomen, Minnesota, appeared as attorneys for the petitioning defendants, and

C. U. Landrum, Special Assistant United States Attorney appeared as attorney for the plaintiff.

[fol. 45] The Court being fully advised in the matter, and upon all the files and records.

It Is Ordered That the said motion of the defendants named be, and the same is hereby in all things denied.

Dated this 28th day of March, 1942.

George F. Sullivan, United States District Judge.

[File endorsement omitted.]

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In United States District Court

[Title omitted]

Notice of Appeal—Filed May 18, 1942

Notice Is Hereby Given that County of Mahnomen, one of the defendants above named, hereby appeals to the Cir-

cuit Court of Appeals for the Eighth Circuit from the final judgment entered in this action on March 7, 1942.

Dated this 11th day of May, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, [fol. 46] St. Paul, Minnesota; L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

Admission of Service

Service of the hereto attached Notice of Appeal is hereby admitted at Detroit Lakes, Minnesota, this 18th day of May, 1942.

United States of America, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

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[fol. 47] In United States District Court

Election as to Printing of Record—Filed June 18, 1942

To the Clerk of the Above Named Court:

Please Take Notice that the County of Mahnomen, a municipal corporation, appellant above named, having appealed said cause to the Circuit Court of Appeals of the Eighth Circuit, hereby elects and directs the Clerk of the above named Court to have the record on appeal printed by [fol. 48] and under the directions of the Clerk of the Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri.

Dated at Mahnomen, Minnesota, this 17th day of June, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capitol, St. Paul, Minnesota, by L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 49] In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted]

Order for Printing of Record and Filing of Briefs under Former Rules of Court—July 13, 1942

On Consideration of the motion of appellant for leave to proceed with this appeal with respect to the printing and filing of the record and appellant's brief under the provisions of the former rules of this Court, It is Ordered that said motion be, and is hereby, granted, the record to be printed and briefs to be filed as was provided in the former rules of this Court.

July 13, 1942.

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[fol. 50] In United States District Court

[Title omitted]

Cross-Appellant's Designation of Record on Appeal—Filed July 20, 1942

To the Clerk of the Above Named Court:

The appellee, United States of America, designates the following portions of the record and proceedings to be included in the record on appeal herein, in addition to those matters contained in the appellant's designation:

1. Statement of Points Relied on By Appellee on Its Cross Appeal.

2. Notice of Cross Appeal by the United States of America.

Dated July 18, 1942.

United States of America, by Victor E. Anderson, United States Attorney, District of Minnesota, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

[fol. 51] Due service of Appellee's Designation of Additional Portions of the Record is hereby Admitted this 18th day of July, 1942.

L. A. Wilson, County Attorney, Mahnomen County, of Counsel for Appellant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF POINTS RELIED UPON BY CROSS-APPELLANT—Filed July 20, 1942

I

The Court erred in denying to plaintiff recovery of the amount paid for taxes for the years 1922 to 1925, inclusive.

Dated this 18th day of July, 1942.

United States of America, Victor E. Anderson, United States Attorney, District of Minnesota, by C. U. Landrum, Special Assistant U. S. Attorney, Detroit Lakes, Minnesota.

[File endorsement omitted.]

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[fol. 52] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF CROSS APPEAL BY UNITED STATES OF AMERICA—Filed June 27, 1942

Notice is hereby given, that the United States of America, Plaintiff above named, by and through its United States Attorney for the District of Minnesota, and its Special Assistant United States Attorney, the undersigned, hereby cross appeals to the Circuit Court of Appeals for the Eighth Circuit from that part of the Final judgment entered in this action on March 7, 1942, which denied to plaintiff recovery of amount paid for taxes for the years 1922 to 1925, inclusive, Order denying motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment or for a new trial being entered on March 28, 1942, express directions for said cross appeal being given by the Attorney General of the United States.

Dated this 27th day of June, 1942.

Victor E. Anderson, United States Attorney for the District of Minnesota. C. U. Landrum, Special Assistant United States Attorney, Attorneys for the Plaintiff, 221 Federal Courts Building, Saint Paul, Minnesota.

[fol. 53] Copy of this Notice to be sent to J. A. A. Burnquist, Esq., Attorney General, St. Paul, Minnesota. Geo. B. Sjoselius, Esq., Assistant Attorney General, St. Paul, Minnesota. L. A. Wilson, Esq., County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Defendants.

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[File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT

CERTIFICATE OF CLERK ON MAILING OF NOTICE OF CROSS APPEAL—Filed June 30, 1942

This is to certify, that I, Thomas H. Howard, Clerk, United States District Court for the District of Minnesota, Sixth Division, have this day caused to be mailed to each of the following named parties who appear of record in the above entitled proceeding, at their respective addresses, as such addresses appear of record in these proceedings, copy of the original Notice of Cross Appeal to the Circuit Court of Appeals for the Eighth Circuit, by depositing the [fols. 54-61] same in the post office of the city of Fergus Falls, Otter Tail County, Minnesota:

J. A. A. Burnquist, Esq., Attorney General, Saint Paul, Minnesota. Geo. B. Sjoselius, Esq., Assistant Attorney General, Saint Paul, Minnesota. L. A. Wilson, Esq., County Attorney, Mahnomen County, Mahnomen, Minnesota.

Dated: June 30th, 1942.

Thomas H. Howard, Clerk, by Louise W. Smith, Deputy.

[File Endorsement Omitted]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 62] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, NOVEMBER TERM, 1942

ORDER OF SUBMISSION

Wednesday, November 4, 1942.

No. 12340

COUNTY OF MAHNOMEN, a municipal corporation, Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the District of Minnesota

and

No. 12376

UNITED STATES OF AMERICA, Appellant,

vs.

STATE OF MINNESOTA, et al.

Appeal from the District Court of the United States for the District of Minnesota

These causes, Nos. 12340 and 12376, having this day been called for hearing, are argued together, and argument was commenced by Mr. L. A. Wilson, County Attorney, and Mr. George B. Sjoselius, Assistant Attorney General, for the County of Mahnomen and State of Minnesota, et al., continued by Mr. Vernon L. Wilkinson, Attorney, Department of Justice, for the United States, and concluded by Mr. George B. Sjoselius, Assistant Attorney General, for the County of Mahnomen and State of Minnesota, et al.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 63] In United States Circuit Court of Appeals, Eighth Circuit, November Term, A. D. 1942

No. 12340

County of Mahnomen, a municipal corporation, Appellant,

vs.

United States of America, Appellee

Appeal from the District Court of the United States for the District of Minnesota

No. 12376

November Term, A. D. 1942

United States of America, Appellant,

vs.

State of Minnesota, et al., Appellees

Appeal from the District Court of the United States for the District of Minnesota

Opinion—December 7, 1942

Mr. L. A. Wilson, County Attorney, and Mr. George B. Sjoselius, Assistant Attorney General (Mr. J. A. A. Burnquist, Attorney General, was with them on the brief) for County of Mahnomen and State of Minnesota, et al.

[fol. 64] Mr. Vernon L. Wilkinson, Attorney, Department of Justice (Mr. Norman M. Littell, Assistant Attorney General, and Mr. C. U. Landrum, Special Assistant to the United States Attorney, were with him on the brief) for United States of America.

Before Gardner, Woodrough and Thomas, Circuit Judges

Woodrough, Circuit Judge, delivered the opinion of the court.

This suit was brought by the United States to carry out a trust obligation undertaken by it in respect to a tract of land which it allotted in severalty and conveyed by trust patent to Isabelle Garden, who is an adult female mixed-

blood Chippewa Indian of the White Earth Reservation, in Mahnomen County, Minnesota. One of the obligations assumed by the United States under the terms of its trust was that it would turn over the land to the Indian at the termination of the twenty-five year trust period "free of all charge or incumbrance", and the gist of the complaint filed by the United States was that the defendant Mahnomen County prevented the United States from completely discharging its trust by wrongfully assessing taxes against the land during the period of the trust and collecting the same from the Indian. It asked for judgment against the County for the amount of the tax money so obtained, and interest. The trial court awarded judgment as prayed for the tax money collected by the County after the period had expired.

The County appeals, claiming that the United States was not entitled to any recovery; and the United States appeals, claiming that recovery should have been awarded [fol. 65] for all the tax money collected by the County from the Indian.

It appears that the trust patent describing the land as parcel 7 was issued December 13, 1902, pursuant to the General Allotment Act of 1887 (24 Stat. 388) and the Nelson Act of 1889 (25 Stat. 642), and provided that the United States would hold the land in trust for a period of twenty-five years, and then would convey it to the allot-ee in fee "discharged of said trust and free of all charge or incumbrance whatsoever." Thereafter the two Clapp Amendments of 1906 (34 Stat. 353) and 1907 (34 Stat. 1034) were passed, the relevant provisions of the first, as amended by the second, reading as follows:

"That all restrictions as to sale, encumbrance or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments."

Isabelle Garden became an adult in 1911 and entitled under the foregoing provisions to apply for a patent in fee simple for her allotment, but she made no such applica-

tion, and the twenty-five year period specified in her trust patent expired in 1928.

Beginning in 1911 the County assessed taxes against the land each year and the Indian paid the same currently except that the taxes for 1922 and 1927 were permitted to become delinquent and the Indian did not redeem until June 30, 1936, when she purchased Tax Assignment Certificates therefor, as then permitted by the Minnesota law. This suit was begun by the United States in 1940.

It has been settled by long course of adjudication that State and County authorities may not lawfully tax Indian [fol. 66] lands while the United States holds them in trust under promise to convey to the Indian at the expiration of the trust period free of incumbrance. The federal power is supreme in this field and no State power of taxation can lawfully be exercised to create liens upon the land which the United States has undertaken to keep and convey free of liens. *In re Kansas Indians*, 72 U. S. 737; *In re New York Indians*, 72 U. S. 761; *United States* v. *Rickert*, 188 U. S. 432; *Board of Commissioners of County of Jackson, Kansas* v. *United States*, 308 U. S. 343; *McCurdy* v. *United States*, 264 U. S. 484; *Carpenter* v. *Shaw*, 280 U. S. 363; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *United States* v. *Benewah County, Idaho*, 9 Cir., 290 F. 628; *United States* v. *Nez Perce County, Idaho*, 9 Cir., 95 F. 2d 232; *United States* v. *Lewis County, Idaho*, 9 Cir., 95 F 2d 236; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55. It is also settled that Congress itself may not by legislative fiat deprive the Indian of the tax exemption inuring to him under the obligation to convey to him free of incumbrance. It is held that he has a vested right to the exemption. *Choate* v. *Trapp*, 224 U. S. 665; *Carpenter* v. *Shaw*, 280 U. S. 363; *United States* v. *Benewah County, Idaho*, 9 Cir., 290 F. 628; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *United States* v. *Spaeth*, 24 F. Supp. 465; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733. It appears that in 1919 a patent in fee for the lands in question was issued to the Indian Isabelle Garden, but the same was not applied for by her and so was not issued in conformity with, or as authorized by the provisions of the Clapp Amendments, supra. The United States therefore remained obligated to perform the trust defined in the original patent, and the County recognizing such "sovereign power and authority over • • • parcel 7 • • • for the period of twenty-five years from and after the date

of issuance of the trust patents" stipulated in the court [fol. 67] below that "said land [parcel 7] was not legally taxable prior to the year 1928." In the strict and diligent performance of its trust, the United States should have applied to its courts for decree or decrees avoiding the apparent liens of taxes illegally assessed by the County against the land each year from 1911 up to 1928, or for injunction, but time does not run against the sovereign and its right to resort to its courts in aid of the performance of governmental obligation is not restricted to any particular form of action. Recovery for the Indian of the money obtained by taxation illegally imposed also accomplishes the performance by the government o. its trust and it is well settled that that remedy is equally available to it in its courts. *Board of Commissioners of County of Jackson, Kansas*, v. *United States*, 308 U. S. 343; *Bryan County, Oklahoma*, v. *United States*, 10 Cir., 123 F. 2d 782; *United States* v. *Chehalis County*, 217 F. 281; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55; *United States* v. *Nez Perce County, Idaho*, 9 Cir., 95 F. 2d 236; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733.

The County appears not to question the law or the right of the government to sue in its courts as above stated. It contends that a suit which Isabelle Garden brought against it in the state court in 1923 to recover taxes wrongfully assessed against her land and paid by her ought to be deemed a bar to this action. That action was adjudicated against her on demurrer to her petition but the United States was not a party to the action. But the interest which the United States has to see to it that its trust obligation is performed is invested in it as a sovereign and that interest cannot be impaired by a judgment in any proceeding to which it was not a party. The state judgment was therefore not a bar to this action. *Bowling and Miami* [fol. 68] *Investment Co.* v. *United States*, 233 U. S. 528; *United States* v. *Candelaria*, 271 U. S. 432; *Bryan County, Oklahoma*, v. *United States*, 10 Cir., 123 F. 2d 782. The County also contends that it should be held that the tax payments which it obtained from Isabelle Garden were voluntary payments and it is presented that under Minnesota law the taxpayer may not recover such voluntary payments of taxes by action in the courts of Minnesota. In this connection stress is laid upon the extent to which the Clapp

Amendments operated to emancipate the adult mixed-blood Indians to whom it related, and it is argued that they became in effect sui juris and therefore subject to all the consequences of their acts applicable to others in the state. If others are deemed to waive all objection to illegal taxes by voluntarily paying the same, so it is said should the Indians.

The argument would not be considered without force if the case was of first impression. In the matter of the alienation of lands conveyed by trust patent it is settled that if the Indian acts to apply for fee patent before expiration of the trust period and his application is granted and he obtains the fee and alienates it, then the obligation of the government is deemed to have been discharged. *United States* v. *Waller*, 243 U. S. 452; *Williams* v. *Johnson*, 239 U. S. 414; *United States* v. *Spaeth*, 24 F. Supp. 465. But in the matter of the exemption of the land from taxation the course of judicial decision has consistently denied the power of the states or their agencies to impair the obligation of the United States to perform that provision of its trust agreement by which it has undertaken to make its conveyance free of such incumbrance. *Choate* v. *Trapp*, 224 U. S. 665; *Board of Commissioners of Caddo County, Oklahoma*, v. *United States*, 10 Cir., 87 F. 2d 55; *Morrow* v. *United States*, 8 Cir., 243 F. 854; *Glacier County, Montana*, v. *United States*, 9 Cir., 99 F. 2d 733.

[fol. 69] The trial court erroneously took the position that the United States could not recover taxes paid after the expiration of the trust period upon levies made prior to that date for the reason that those payments were voluntarily made by an emancipated Indian. The duty of the United States to see that its guaranty of tax immunity is respected was a continuing one. The fact that the taxes wrongfully levied between 1922 and 1927 were not discharged until 1936 is immaterial. Any taxes which were assessed prior to 1928 and which the allot-ee had to discharge then or thereafter in order to obtain an unencumbered title were impingements upon the allot-ee's vested tax exemption. The guaranty which he held of an unencumbered title in fee from the United States devolved upon that government the duty to remove that impingement. Once the duty was laid upon the government to preserve the land intact that duty must remain until performance. It was an obligation of protection against acts done within the designated period, and not merely of assistance within it.

We therefore order that the judgment of the District Court be affirmed in so far as it provides for recovery of taxes paid for the years 1911 to 1921, and be reversed in so far as it denies recovery of taxes paid for the years 1922 to 1925.[1]

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[fol. 70] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 12340

COUNTY OF MAHNOMEN, a Municipal Corporation, Appellant,

vs.

UNITED STATES OF AMERICA

No. 12376

UNITED STATES OF AMERICA, Appellant,

vs.

STATE OF MINNESOTA; COUNTY OF MAHNOMEN, a Municipal Corporation; Otto Burggraf, E. B. Barry, Henning Lofstrand, John P. Neisen, John Adams, as County Commissiones of Said County, and Their Successors in Office; John J. Spaeth, as Auditor of Said County and His Successors in Office; Adolph J. Paul, as Treasurer of Said County and His Successors in Office; Sigvold Tveit, as Register of Deeds of Said County and His Successors in Office; Camilla Hardy, as Clerk of Court of said County and Her Successors in Office, and Robert Pearson

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[1] Taxes for 1922 to 1925 were discharged by the purchase in 1936 of Tax Assignment Certificate No. 76. Taxes for the years 1926 to 1934 were similarly discharged in 1936 by the purchase of Tax Assignment Certificate No. 232. Since her allotment "was not legally taxable prior to the year 1928", the allot-ee should not have been required to pay the taxes for 1926 and 1927. But inasmuch as the taxes for 1928 to 1934 (which she was legally required to pay) exceeded the amount she actually paid for Tax Assignment Certificate No. 232 covering the years from 1926 to 1934, the United States makes no claim for any refund for the years 1926 and 1927.

JUDGMENT—December 7, 1942

Appeals from the District Court of the United States for the District of Minnesota

These causes came on to be heard on the transcripts of the record from the District Court of the United States for the District of Minnesota and were argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the judgment of the said District Court in these causes be, and the same is hereby, affirmed insofar as it provides for recovery of taxes paid [fol. 71] for the years 1911 to 1921, inclusive, and that said judgment be, and the same is hereby, reversed insofar as it denies recovery of taxes paid for the years 1922 to 1925, inclusive.

And it is further Ordered by this Court that no costs be taxed in favor of either of the parties in this Court, and that these causes, be, and they are hereby, remanded to the said District Court for further proceedings consistent with the opinion of this Court this day filed herein.

December 7, 1942.

---

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF ISSUANCE OF MANDATE—Filed December 19, 1942

To the Honorable, The United States Circuit Court of Appeals, Eighth Circuit:

The County of Mahnomen, appellant and appellee respectively in the above entitled actions, intends to file with the Supreme Court of the United States a petition for a writ of certiorari requesting that court to review the decision of this court in both of the above entitled actions. The petition will be filed promptly after the entry of judgment in this court.

Wherefore the County of Mahnomen respectfully applies to this court for an order staying the mandate and execution and enforcement of the judgment herein until the petition for a writ of certiorari has been acted upon by the Supreme [fol. 72] Court of the United States, and if the writ be granted, further staying the mandate and the execution and

enforcement of the judgment herein until the above entitled actions have been finally disposed of by the Supreme Court of the United States.

Dated at St. Paul, Minnesota, this 17th day of December, 1942.

J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Assistant Attorney General, 102 State Capital, St. Paul, Minnesota; L. A. Wilson, County Attorney, Mahnomen County, Mahnomen, Minnesota, Attorneys for Appellant.

[File endorsement omitted.]

---

In United States Circuit Court of Appeals

Order Staying Issuance of Mandate—December 31, 1942

November Term, 1942

Thursday, December 31, 1942.

On Consideration of the motion of the County of Mahnomen for a stay of the mandate in the above causes pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is [fol. 73] filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of these cases by the Supreme Court.

December 31, 1942.

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[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed March 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1942**

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# No. 684

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COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

---

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.**

---

GEO. B. SJOSELIUS,
*Assistant Attorney General,*
*State of Minnesota,*
*Counsel for Petitioner.*

J. A. A. BURNQUIST,
*Attorney General of Minnesota;*
L. A. WILSON,
*County Attorney, Mahnomen County;*
LOWELL W. BENSHOOF,
*County Attorney, Becker County;*
A. B. STAUNING,
*County Attorney, Clearwater County,*
*Of Counsel.*

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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1942

## No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

## PETITION FOR WRIT OF CERTIORARI.

*To the Honorable, the Supreme Court of the United States:*

The petition of the County of Mahnomen, Minnesota, a municipal corporation, for a writ of certiorari directed to the United States Circuit Court of Appeals, Eighth Circuit, respectfully shows to this Honorable Court:

I.

### The Summary Statement of the Matter Involved.

Your petitioner seeks to have this Court review the decision of the United States Circuit Court of Appeals, Eighth Circuit, in the cases entitled: County of Mahnomen, a municipal corporation, appellant, vs. United States of America, appellee (No. 12340 Civil), and United States of America,

appellant, vs. State of Minnesota, et al., appellees (No. 12376 Civil), handed down on December 7, 1942, and as yet unreported, affirming that part of the judgment (R. 33 to 36) of the United States District Court for the District of Minnesota, Sixth Division, entered March 7, 1942, which allowed recovery of the sum of $405.97, the aggregate of taxes for 1911 to 1921, both inclusive, paid by Isabelle Garden, an adult, mixed-blood Indian of the White Earth Reservation in Minnesota upon her Indian allotment, and reversing that part of said judgment which in effect denied recovery of taxes paid by said allottee upon her said allotment for the years 1922 to 1925.

This action had its origin in a suit brought by the United States of America in 1940 against County of Mahnomen, its officers and the State of Minnesota. It involved seven allotments in the White Earth Indian Reservation to Indians. It was dismissed as to the State of Minnesota.

Seven allotments are involved in this action but since the principal and only important issue involves parcel 7 alone, the allotment of Isabelle Garden, we shall state the facts only in so far as they involve that allotment.

Isabelle Garden is a living, female, mixed-blood Indian of the White Earth Reservation in Minnesota who was born in the month of July, 1893, and therefore became an adult in July, 1911 (R. 22). She was allotted the east half of the southeast quarter of section five (5) in township one hundred forty-four (144) north, of range forty-one (41) west, of the Fifth Principal Meridian in Mahnomen County, Minnesota, on December 13, 1902, as her original allotment Number 3612 (R. 19-20). A patent in fee was issued to her on December 8, 1919. On August 24, 1917, said Isabelle Garden (being then an adult, mixed-blood Indian) paid taxes for the years 1911, 1912, 1913, 1914 and 1915 on her said allotment and on December 24, 1917, paid those for 1916. She paid the taxes for 1917 and

1918 in semi-annual installments as permitted by the statutes of the state of Minnesota before the same became delinquent. The 1919 taxes were paid by her in one sum on May 24, 1920, and before the same became delinquent. The 1920 taxes were permitted to become delinquent but were paid in full on February 17, 1922. The taxes for 1921 were paid in installments before they became delinquent. Taxes for 1922 to 1927, inclusive, were redeemed on June 30, 1936 (R. 21). There is no allegation, proof or even suggestion that said taxes were paid under duress or involuntarily. Nor, since many of them were paid currently and year after year, could the claim well be made that the payments were other than voluntary payments.

In February, 1923, said allottee, Isabelle Garden (being then an adult, mixed-blood Indian to whom a patent in fee simple had issued December 8, 1919, pursuant to the policy of the United States with respect to adult, mixed-blood allotments but without application on the part of said allottee) commenced an action in the District Court in and for Mahnomen County, Minnesota, Fourteenth Judicial District, to recover the taxes paid by her as above set out for the years 1911 to 1921, inclusive. A demurrer to her complaint was interposed and sustained by order of said court dated March 11, 1927. She did not appeal, plead over or proceed further in said action (R. 21-22).

The United States (though its amended complaint does not allege that Isabelle Garden, or any allottee, had paid any taxes voluntarily or otherwise) sought recovery of all taxes paid by said Isabelle Garden as above set out and was by the District Court allowed recovery of those paid for the years 1911 to 1921, inclusive, aggregating $405.97, and denied recovery of those for the years 1922 to 1927, inclusive (R. 35).

The case was submitted to the trial court upon two stipulations of fact. The first was made on January 8, 1941 (R.

12). The second was made on April 8, 1941 (R. 15). The trial court made its findings of fact, conclusions of law, and order for judgment on July 9, 1941 (R. 17).

Judgment was entered upon the findings and conclusions of the District Court (R. 33). The County of Mahnomen by appropriate motions sought a vacation of said judgment and amendments of said findings and conclusions or a new trial (R. 36), and said motions being denied (R. 44), an appeal to the United States Circuit Court of Appeals, Eighth Circuit, followed (R. 45). The United States appealed from the judgment (R. 53).

The Circuit Court of Appeals handed down its decision on December 7, 1942, as stated above.

## II.

### Jurisdictional Statement.

Petitioner relies upon the following to sustain the jurisdiction of this Court:

a. The United States Judicial Code, Section 240, as amended.

b. There is involved the construction of the Clapp Amendments.

The first Clapp Amendment of June 21, 1906, 34 Stat. 325, 353, provides:

> "That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full

bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The second Clapp Amendment of March 1, 1907, 34 Stat. 1034, provides:

"That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

c. There is invoived the construction of the Act of May 8, 1906, 34 Stat. 182, which provides in part:

"Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law."

d. The date of the judgment in the Circuit Court of Appeals, Eighth Circuit, is December 7, 1942.

## III.

### Questions Presented.

1. Conceding immunity from taxation during the trust period to be a vested right of adult mixed-blood Indians of the White Earth Reservation, are such Indians empowered to waive such vested right by the following language of the Clapp Amendments:

> "That all restrictions as to the sale, incumbrance, or *taxation* for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, * * *" (Italics ours.)

2. Is the United States of America bound by such waiver by such Indians?

3. Are adult mixed-blood Indians of the White Earth Reservation in Minnesota emancipated?

4. Could such Indians under the Clapp Amendments voluntarily subject their allotted lands to taxation?

5. Can the United States of America recover moneys voluntarily paid by such Indians as taxes upon such allotted lands?

6. Is the United States bound by the result of an action instituted by such an Indian to recover moneys paid as taxes upon such allotted lands?

7. Is the law the same for money paid as taxes during the trust period and for money paid as taxes after the expiration of the trust period?

8. May the United States of America sue in its own name to recover moneys voluntarily paid as taxes by such Indians upon such allotted lands?

9. Does the Act of May 8, 1906, 34 Stat. 182, subject adult mixed-blood Indians of the White Earth Reservation to all laws of Minnesota, civil or criminal?

## IV.

### Reasons Relied Upon for Allowance of Writ.

1. This is the first case in which recovery has been ordered of moneys voluntarily paid as taxes by an emancipated Indian upon her allotment, and the conclusion reached by the United States Circuit Court of Appeals, Eighth Circuit, is contrary to the rule laid down by this Court in *Ward, et al.* v. *Board of County Commissioners*, 253 U. S. 17.

2. This is also the first case in which recovery of taxes paid by an Indian allottee of the White Earth Reservation in Minnesota has been sought. It is, therefore, a case of first impression and a test case which is of great importance to the counties of Mahnomen, Clearwater, and Becker in which said reservation is situated. The amount involved in this case is relatively small, but the aggregate amount which will be affected is very large. So large that it may affect the solvency and future operation of these counties.

3. This is the first case in which the courts have had before them the construction of the provision of the Clapp Amendments authorizing the removal of the restriction upon taxation of lands of adult mixed-blood Indians of the White Earth Reservation.

4. The case is of particular importance to the County of Mahnomen since it is wholly within said reservation and since its organization as of January 1, 1907, has been wholly dependent for operating revenues upon tax income from lands owned either by Indian allottees or their grantees.

5. The decision of the Circuit Court of Appeals is contrary to the ruling of this Court in *United States* v. *Waller*, 243 U. S. 452, that the Clapp Amendments are a "Legislative judgment" that adult mixed-blood Indians of the White Earth Reservation are competent.

6. The decision in effect holds invalid that part of the Clapp Amendments which deals with removal of restriction as to taxation. This is contrary to the reasoning contained in other decisions of Federal Courts construing said amendments and particularly to *United States* v. *Waller*, *supra*, *Morrow* v. *United States*, 243 Fed. 854, and *United States* v. *Spaeth*, 24 Fed. Supp. 465, to the effect that adult mixed-blood allotments may not be taxed against the will or without the consent of such allottees. The court thereby implied that such lands could be taxed with the consent of such Indians. So construed the amendments do not impair the vested right of such allottees to tax exemption and at the same time recognize the status of such allottees as competent persons in harmony with the well-recognized policy of the United States to encourage its Indian wards to become competent and to take their place in society as such. This, we submit, is the correct construction, and so construed the amendments are valid in all their parts.

7. The determination of the effect of the Act of May 8, 1906, 34 Stat. 182, is a matter of great importance not only to the State of Minnesota and its political subdivisions but also to the mixed-blood Indians of the White Earth Reservation.

8. If the decision becomes a precedent, there may be many similar suits involving transactions back to 1907. By reason of the long lapse of time, it is inevitable that witnesses will have died and records become lost or mislaid, and the defense will be difficult, costly, and vexatious.

9. In view of the language of the Clapp Amendments and the construction placed upon them by the courts, the county and its officials were justified in assuming that they might lawfully receive and use taxes tendered and voluntarily paid by emancipated allottees. Refunds of taxes so paid at this late date would prove a tremendous burden and might well prove disastrous.

10. The ruling of the Circuit Court of Appeals denies to the mixed-blood Indians of the White Earth Reservation the right to avail themselves of greater and better privileges of county government, such as roads and schools, by increasing the money available therefor by the voluntary payment of taxes upon their allotted lands.

11. It is submitted that the public interest will be promoted by a prompt settlement in this Court of the questions involved which are important and vital to the counties affected and their inhabitants.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket No. 12340, Civil, County of Mahnomen, a municipal corporation, appellant, vs. United States of America, appellee, and No. 12376, Civil, United States of America, appellant, vs. State of Minnesota, et al., appellees, being the appeal and cross-appeal from the District Court of the United States for the District of Minnesota, and that the judgment of the United States Circuit Court of Appeals, Eighth Circuit, may be reversed by this Honorable Court, and that your

petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

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*Bagley, Minnesota.*

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1942**

## No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

## BRIEF IN SUPPORT OF THE PETITION.

I.

### Opinion Below.

The opinion of the United States Circuit Court of Appeals, Eighth Circuit, is as yet unreported, but is set forth verbatim in the record beginning at page 61.

II.

### Jurisdiction.

A statement as to the jurisdiction of the Supreme Court of the United States is set forth in the petition.

III.

### Statement.

A statement of the facts, the questions presented and the reasons relied upon for the issuance of the writ will be found in the petition.

## IV.

### Argument.

The Clapp Amendments which are set forth in the petition are directly involved in the case at bar. These have been before this Court and other Federal courts in cases involving the construction of provisions other than that which petitioner relies upon in this case. There is also before the court a part of the Act of May 8, 1906, 34 Stat. 182, which is set forth in the petition. The questions presented and the reasons relied upon for the allowance of the writ, we shall not restate. We rely on all of them but shall not discuss them separately.

The second Clapp Amendment, among other things, provides "That all restrictions as to the * * * taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed * * *." This provision as to taxation is before this Court for construction for the first time. The petitioner contends that the conclusion reached by the Circuit Court of Appeals is contrary to the express provision of the amendment, the intention of the Congress as evidenced by the amendment and the reasoning of this Court in construing the Clapp Amendments in other cases.

That the adult mixed-blood Indians of the White Earth Reservation have a vested right to the exemption of their allotted lands from taxation during the trust period is not disputed by the petitioner. It does contend that such Indians were emancipated by the Clapp Amendments and that, as competent persons, they could voluntarily waive their vested right to tax exemption of their allotted lands during the trust period. This contention, which was denied by the Circuit Court of Appeals, is sustained by the Clapp Amend-

ments and the reasoning of this Court in cases in which the amendments were involved.

In *U. S.* v. *Waller*, 243 U. S. 452, 462, referring to the Clapp Amendments, the court said:

> "The act thus evidences a legislative judgment that adult mixed-blood Indians are, in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands."

In an earlier case, *U. S.* v. *First National Bank*, 234 U. S. 245, 259, in considering the Clapp Amendments, the court said:

> "Evidently this legislation contemplated in some measure the rights of others who might deal with the Indians, and obviously was intended to enlarge the right to acquire as well as to part with lands held in trust for the Indians."

The reasoning of the court in the above cases was followed by the same Circuit Court of Appeals. In *Morrow* v. *United States*, 243 Fed. 854, 858, that court impliedly recognized the power of such Indians to waive their vested rights when it said:

> "His (an adult mixed-blood Indian's) rights are vested and are impervious to alteration *against his* will except through the sovereign power of eminent domain. One of these rights was freedom from state and local taxation." (Italics supplied.)

The United States District Court for Minnesota also followed this Court's reasoning in construing the Clapp Amendments. The District Court also impliedly recognized the power of such Indians to waive their vested rights when it said in *United States* v. *Spaeth*, 24 Fed. Supp. 465, 466, that the passage of the Clapp Amendments—

> "could not disturb this vested right to be free from taxation during the twenty-five year period unless the Indian *willingly* changed his status by *acceptance* of the rights and privileges contained in said amendment." (Italics supplied.)

and on page 469:

> "Presumably, Congress determined that adult mixed-blood Indians on the White Earth Indian Reservation were capable of self-management so far as their lands were concerned."

In *Ward* v. *Love County*, 253 U. S. 17, 22, this Court said:

> "We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. But we are unable to accept its decision in other respects."

There is no permissive statute in Minnesota.

The Supreme Court of Minnesota followed the decision in *Waller* v. *U. S.*, *supra*, when in construing the Clapp Amendments in *Baker* v. *McCarthy*, 145 Minn. 167, 170; 176 N. W. 643, it held:

> "We think it is the general view that the issuance of a fee-simple patent operates, by implication, to emancipate the Indian from Federal guardianship and jurisdiction. Luck Land Co. *v.* Dickson, 132 Minn. 396, 157 N. W. 655, affirmed 242 U. S. 371, 37 Sup. Ct. 167, 61 L. ed. 371. We hold that the same result was accomplished by the provision of the Clapp amendments converting the trust deeds theretofore issued in the case of adult mixed-bloods into instruments of fee-simple title, see United States *v.* Waller, 243 U. S. 452, 37 Sup. Ct. 430, 61 L. ed. 843, and that the Clapp amendments by implication gave to the probate courts of this state jurisdiction to administer the estates and determine the heirs of an adult mixed-blood allottee, whether death occurred before or after these amendments."

The Act of May 8, 1906, 34 Stat. 182, provides in part:

> "Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law."

Construing the Clapp Amendments, the court in *United States* v. *Spaeth*, *supra*, said:

> "The lands in question were, by reason of that amendment, subject to no alienation restrictions. A title tantamount to fee by reason of legislative enactment existed in the allottee."

Isabelle Garden, the Indian here involved, sought to recover in the state courts of Minnesota some of the taxes which she had voluntarily paid. The state demurred to her complaint. The demurrer was sustained and she took no further steps (R. 15, 16). Under Minnesota law taxes voluntarily paid cannot be recovered.

*Falvey* v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;

*Gould* v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303, 530.

Upon these facts it appears that the State court was exercising jurisdiction conferred upon it by the Clapp Amendment, supra, and the Act of May 8, 1906, supra. The judgment of the State court as a court of competent jurisdiction is binding upon the United States.

It is petitioner's contention that the Circuit Court of Appeals erred in failing to apply to the case at bar the Clapp Amendments and the decisions construing them. Those alone are controlling. It was erroneous to apply

decisions construing acts of Congress relating to Indians and allotted lands other than those of the White Earth Indian Reservation.

The court will note the reference in the opinion of the Circuit Court of Appeals to the statement in the first stipulation of facts "that said land was not legally taxable prior to the year 1928" (R. 14). We respectfully submit that this stipulation must be read together with the second stipulation of facts setting out the record of dates of payments of taxes (R. 15), and the proceedings thereafter. From these it clearly appears that it should have read—"That said land was not legally taxable prior to the year 1928 *without the consent of the allottee.*" (Part in italics supplied.)—and that it did not do so was through inadvertence since that was clearly the theory upon which the case was submitted, briefed, and argued in the District Court and Circuit Court of Appeals. This is confirmed by the District Court when it said (R. 30):

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

We think that the two stipulations and the record fairly present the question whether taxes so paid can be recovered. This is the very issue which all parties are seeking to determine by this litigation.

Mahnomen County lies wholly within the White Earth Indian Reservation. Since its organization in 1907, many Indians have voluntarily paid their taxes through the years in order to have schools, roads and other benefits of county organization. Many of the early officers were Indians. Now, after taxes have been voluntarily paid for more than

30 years by the Indians, the United States for the first time has upon its own initiative commenced an action to recover the taxes so paid. With records and witnesses difficult to find after many years, the actions will be difficult to defend. If the United States should prevail, the solvency of the county will be uncertain and the rights and privileges of the Indians and others to benefits such as schools and roads will be endangered. That part of the White Earth Reservation which is not in Mahnomen County is in Becker and Clearwater Counties. In a lesser but still substantial degree all that threatens petitioner will also affect the other two counties. The amount involved in the case at bar is relatively small but the aggregate amount is many thousands of dollars. The ultimate decision in the case at bar is of vital importance to all these counties.

## Conclusion.

Adult mixed-blood Indians of the White Earth Reservation were emancipated by the Clapp Amendments. As competent persons they could voluntarily waive their vested right to tax exemption of their allotted lands during the trust period. The United States is bound by such waiver. The Circuit Court of Appeals erred in holding to the contrary.

As construed above, the provision of the Clapp Amendments relating to taxation is valid. If a valid construction of the provision of the Clapp Amendments was possible, it was error for the Circuit Court of Appeals not to so construe it.

Such Indians are bound by the final disposition of actions brought by them in State courts. The United States is equally bound by the outcome of such case. The Circuit Court of Appeals erred in holding to the contrary.

The United States owes no duty to such Indians under these facts to recover moneys voluntarily paid by them as

taxes. The Circuit Court of Appeals erred in holding to the contrary.

This is the first case before this Court in which the United States has sought to recover and the lower court has held it could recover taxes voluntarily paid by such Indians.

The decision of the Circuit Court of Appeals is contrary to the applicable decisions of this Court.

The case at bar is of vital importance not only to petitioner but also Becker and Clearwater Counties of Minnesota.

The decision of the Circuit Court of Appeals is erroneous and should be reversed.

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*102 State Capitol,*
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Of Counsel:

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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# No. 684

---

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

---

## BRIEF OF PETITIONER.

---

GEO. B. SJOSELIUS,
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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1942**

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# No. 684

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COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

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## BRIEF OF PETITIONER.

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### Opinions Below.

The opinion and supplemental memorandum of the District Court (R. 22-30) are not reported. The opinion of the Circuit Court of Appeals (R. 47-52) is reported in 131 F. (2d) 936.

### Grounds On Which Jurisdiction Is Invoked.

The grounds on which jurisdiction is invoked are set forth in the petition for writ of certiorari on pages 4 and 5.

### Statement of the Case.

This action had its origin in a suit brought by the United States of America in 1940 against County of Mahnomen, its officers and the State of Minnesota. It involved seven

allotments in the White Earth Indian Reservation to Indians. It was dismissed as to the State of Minnesota.

Seven allotments are involved in this action but since the principal and only important issue involves parcel 7 alone, the allotment of Isabelle Garden, we shall state the facts only in so far as they involve that allotment.

Isabelle Garden is a living, female, mixed-blood Indian of the White Earth Reservation in Minnesota who was born in the month of July, 1893, and therefore became an adult in July, 1911 (R. 20). She was allotted the east half of the southeast quarter of section five (5) in township one hundred forty-four (144) north, of range forty-one (41) west, of the Fifth Principal Meridian in Mahnomen County, Minnesota, on December 13, 1902, as her original allotment Number 3612 and a trust patent was issued to her therefor (R. 17-18). A patent in fee was issued to her on December 8, 1919. On August 24, 1917, said Isabelle Garden (being then an adult, mixed-blood Indian) paid taxes for the years 1911, 1912, 1913, 1914 and 1915 on her said allotment and on December 24, 1917, paid those for 1916. She paid the taxes for 1917 and 1918 in semi-annual installments as permitted by the statutes of the state of Minnesota before the same became delinquent. The 1919 taxes were paid by her in one sum on May 24, 1920, and before the same became delinquent. The 1920 taxes were permitted to become delinquent but were paid in full on February 17, 1922. The taxes for 1921 were paid in installments before they became delinquent. Taxes for 1922 to 1927, inclusive, were redeemed on June 30, 1936 (R. 19). The taxes for those years, 1922 to 1927, inclusive, were redeemed by Isabelle Garden through her attorney, Robert Pearson (R. 13). There is no allegation, proof or even suggestion that said taxes were paid under duress or involuntarily. Nor, since many of them were paid currently

and year after year, could the claim well be made that the payments were other than voluntary payments (R. 14).

In February, 1923, said allottee, Isabelle Garden (being then an adult, mixed-blood Indian to whom a patent in fee simple had issued December 8, 1919, pursuant to the policy of the United States with respect to adult, mixed-blood allotments but without application on the part of said allottee) commenced an action in the District Court in and for Mahnomen County, Minnesota, Fourteenth Judicial District, to recover the taxes paid by her as above set out for the years 1911 to 1921, inclusive. A demurrer to her complaint was interposed and sustained by order of said court dated March 11, 1927. This was the final order in said action and she did not appeal therefrom (R. 19-20).

The United States (though its amended complaint does not allege that Isabelle Garden, or any allottee, had paid any taxes voluntarily or otherwise) sought recovery of all taxes paid by said Isabelle Garden as above set out and was by the District Court allowed recovery of those paid for the years 1911 to 1921, inclusive, aggregating $405.97, and denied recovery of those for the years 1922 to 1927, inclusive (R. 33).

The case was submitted to the trial court upon two stipulations of fact. The first was made on January 8, 1941 (R. 11). The second was made on April 8, 1941 (R. 13). The trial court made its findings of fact, conclusions of law, and order for judgment on July 9, 1941 (R. 15).

Judgment was entered upon the findings and conclusions of the District Court (R. 31). The County of Mahnomen by appropriate motions sought to vacate said judgment and amend said findings and conclusions or have a new trial (R. 33), and said motions being denied (R. 41), an appeal to the United States Circuit Court of Appeals, Eighth Circuit, followed (R. 41). The United States appealed from

the judgment (R. 44). The appeals were entitled, respecively, *County of Mahnomen, a municipal corporation, appellant,* v. *United States of America, appellee* (No. 12340 Civil), and *United States of America, appellant,* v. *State of Minnesota, et al., appelleees* (No. 12376 Civil).

On December 7, 1942, the United States Circuit Court of Appeals decided both cases affirming that part of the judgment (R. 31 to 33) of the United States District Court for the District of Minnesota, Sixth Division, entered March 7, 1942, which allowed recovery of the sum of $405.97, the aggregate of taxes for 1911 to 1921, both inclusive, paid by Isabelle Garden, an adult, mixed-blood Indian of the White Earth Reservation in Minnesota upon her Indian allotment, and reversing that part of said judgment which in effect denied recovery of taxes paid by said allottee upon her said allotment for the years 1922 to 1925. Thereafter a petition for certiorari was filed herein and granted on March 15, 1943.

## Specification of Errors.

The United States Circuit Court of Appeals, Eighth Circuit erred:

1. In affirming the judgment of the District Court of the United States for the District of Minnesota in so far as it provides for recovery of taxes paid for the years 1911 to 1921.

2. In reversing the judgment of the District Court in so far as it denies recovery of taxes paid for the years 1922 to 1925.

3. In construing the following language of the Clapp Amendments:

> "That all restrictions as to the sale, incumbrance, or *taxation* for allotments within the White Earth Reservation in the State of Minnesota, heretofore or here-

> after held by adult mixed-blood Indians, are hereby removed, * * *." (Italics ours.) (Petition, p. 4, 5.)

so that adult, mixed-blood Indians of the White Earth Reservation are denied the power to waive their vested right to have their allotted lands immune from taxation.

4. In holding that the United States of America is not bound by the waiver of immunity from taxation by such Indians.

5. In construing the Clapp Amendments and the Act of May 8, 1906, 34 Stat. 182 (Petition, p. 5) so as to hold that adult, mixed-blood Indians of the White Earth Reservation are not fully and completely emancipated.

6. In construing the Clapp Amendments so that such Indians cannot voluntarily subject their allotted lands to taxation.

7. In holding that the United States of America can recover moneys voluntarily paid by such Indians as taxes upon such allotted lands.

8. In holding that the United States of America may sue in its own name on behalf of such adult, mixed-blood Indians to recover moneys voluntarily paid as taxes by such Indians upon such allotted lands.

9. In holding that the United States of America is not bound by the result of an action instituted by such an Indian to recover moneys paid as taxes upon such allotted lands.

10. In holding that the Act of May 8, 1906, 34 Stat. 182 (Petition, p. 5) does not subject adult, mixed-blood Indians of the White Earth Reservation to all civil laws of Minnesota and secure to them the benefits of all such laws.

## Summary of Argument.

I. This is a case of first impression. It involves Mahnomen County which lies wholly within the White Earth Reservation in Minnesota. Adult, mixed-blood Indians of that reservation are under the Clapp Amendments owners in fee simple of allotted lands for which a trust patent has been issued. Such Indians are competent to handle their allotted lands. They have a vested right to have their lands immune from taxation. As competent persons they may waive such immunity. Isabelle Garden did waive such immunity by voluntarily paying the taxes upon her allotted lands. Such payments were voluntary. There is no evidence to the contrary. The District Court found that they were voluntary. The Circuit Court did not disagree. Under Minnesota law, voluntary payments of taxes cannot be recovered. The Circuit Court wholly failed to distinguish between the law as to full-blood Indians and the law as to adult, mixed-blood Indians. The trust as to Isabelle Garden's allotted lands terminated when she voluntarily paid the taxes, as she did year after year, and often before delinquency. The Circuit Court mistakenly applied decisions construing laws relating to Oklahoma and other lands instead of the applicable law, including the Clapp Amendments. The taxes having been voluntarily paid and the trust having been terminated, the United States had neither the duty nor the power to recover the taxes so paid. This is supported by the well recognized fact that the principal purpose of Indian supervision and legislation is to bring them to a state of competency. This, Congress said in the Clapp Amendments, has been achieved in Minnesota. The United States cannot recover taxes voluntarily paid by Isabelle Garden.

**Cases Cited—Part I.**

*Baker* v. *McCarthy*, 145 Minn. 167; 176 N. W. 643;
*Board of County Commissioners of Caddo County, Oklahoma* v. *United States*, 10 Cir. 87 F. (2d) 55;
*Bryan County, Oklahoma* v. *United States*, 123 F. (2d) 782;
*Choate* v. *Trapp*, 224 U. S. 665;
*Falvey* v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;
*Fink* v. *County Commissioners*, 248 U. S. 399;
*Glacier County, Montana* v. *United States*, 99 F. (2d) 733;
*Gould* v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303;
*Morrow* v. *United States*, 243 Fed. 854;
*Sweet* v. *Schock*, 245 U. S. 192;
*United States* v. *First National Bank*, 234 U. S. 245;
*United States* v. *Spaeth*, 24 F. Supp. 465;
*United States* v. *Waller*, 243 U. S. 452;
*Ward* v. *Love County*, 253 U. S. 17;
*Warren* v. *Mahnomen County*, 192 Minn. 464; 257 N. W. 77.

**Statutes Cited.**

Act of May 27, 1908, 35 Stat. 312;
First Clapp Amendment of June 21, 1906, 34 Stat. 325, 353;
Second Clapp Amendment of March 1, 1907, 34 Stat. 1034;
General Allotment Act, 24 Stat. 388;
Nelson Act, 25 Stat. 642.

**Treaties.**

February 22, 1855, 10 Stat. 1165;
March 11, 1863, 12 Stat. 1249;

May 7, 1864, 13 Stat. 693;
March 19, 1867, 16 Stat. 719.

II. Isabelle Garden brought an action in the District Court for Mahnomen County to recover certain of the taxes here in question. She did not allege that the taxes were paid involuntarily. She did not succeed in recovering these taxes. The state court had jurisdiction over Isabelle Garden, as a competent person, and over the subject-matter of the action. Isabelle Garden is bound by the result of this action. The United States is also bound by the results thereof. The United States cannot recover such taxes in the instant case.

**Cases Cited—Part II.**

*Continental National Bank* v. *Holland Banking Co.* (C. C. A. 8), 66 F. (2d) 823;
*Davis* v. *Davis*, 305 U. S. 32;
*Engebretson* v. *West* (C. C. A. 8, 1940), 111 F. (2d) 528, 532;
*Helvering* v. *Rhodes' Estate* (C. C. A. 8, 1941), 111 F. (2d) 509;
*Holley* v. *General American Life Insurance Co.* (C. C. A. 8, 1939), 101 F. (2d) 172;
*Missouri Pacific Transportation Co.* v. *Priest* (C. C. A. 8, 1941), 117 F. (2d) 32;
*Prebyl* v. *Prudential Insurance Co. of America* (C. C. A. 8, 1938), 98 F. (2d) 199;
*Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 78;
*U. S.* v. *Lee*, 108 F. (2d) 936;
*U. S.* v. *Richards*, 27 F. (2d) 284;
*U. S.* v. *Spaeth*, *supra.*
*U. S.* v. *Waller*, *supra.*

**Statutes Cited.**

Act of May 8, 1906, 34 Stat. 182.

## ARGUMENT.

This is a case of first impression. This is the first case in which the United States has sought recovery of taxes paid, voluntarily or otherwise, by an adult, mixed-blood allottee of the White Earth Reservation. There have been actions in state courts by such allottees to recover taxes paid by them. Neither their right to bring such actions nor their binding effect has ever heretofore been questioned. The United States has brought actions to cancel and abate taxes assessed and levied upon such allotments and to enjoin further levies but never before has it sought recovery of such taxes actually paid by such allottees.

The determination of the issues in the instant case rests primarily upon the construction of the Clapp Amendments and, for the first time, of that portion thereof lifting the restriction upon taxation. In making this determination we believe that a discussion of the history of Mahnomen County and the Indians of the White Earth Reservation will be helpful.

Mahnomen County lies entirely within the White Earth Reservation. It was organized as of January 1, 1907, and brought to the Indians the advantages of a county organization in the same manner that they were enjoyed by the whites. County organization with its provisions for an educational system and a much-needed highway system was highly desirable to the White Earth Indians, who sought to advance themselves and their families. Many of the early county officers were Indians. When Mahnomen County was organized the Indians knew that the county could not operate without taxes. They participated in county organization and were willing to subject themselves and their lands to taxation so that they might have schools, roads, and other benefits. Many voluntarily paid their taxes through the years. There have been Indians holding county

offices down through the years to the present time. The United States now says in this action that they had no right to voluntarily subject their allotted lands to taxation and to pay those taxes in order to have schools for their children, roads upon which to travel, and other benefits. The United States upon its own initiative seeks to burden the county with the repayment of the taxes voluntarily paid and perhaps make impossible the continued enjoyment of that which the Indians themselves sought by their voluntary payments, schools, roads, poor relief, and other benefits. The Indians did not reach this right to county organization and to be legally competent persons without a struggle.

The history of the Chippewa shows that a number of treaties were made between them and the United States. Treaties of February 22, 1855, 10 Stat. 1165, March 11, 1863, 12 Stat. 1249, May 7, 1864, 13 Stat. 693, March 19, 1867, 16 Stat. 719. The treaties show a progressively greater desire upon the part of the Indians to have lands suitable to agriculture and to adopt the habits and customs of civilized life. These treaties culminated in the Treaty of March 19, 1867. This treaty recites, among other things, that the reservation previously set aside for these Indians "has been found * * * not adapted for agricultural purposes for the use of such Indians as desire to devote themselves to such pursuits." The treaty then provides for the creation of the White Earth Indian Reservation, which consists of 36 townships. The County of Mahnomen is comprised of 16 of these townships. The treaty makes provision for the purchase of cattle, farming implements, the erection of a sawmill and a grist mill, the erection of school buildings and the development of agriculture. Proof that these Indians had already progressed toward a civilized life is found in the acceptance by the Indians of these provisions in the treaty and the further provision subjecting them to the civil and criminal laws of the state. The continued progress of the White

Earth Indians in the habits and customs of civilized life is evidenced by the demand for individual instead of communal ownership of property which resulted in the passage of the Nelson Act of January 14, 1889 (25 Stat. 642), providing for allotments in severalty. The allotments involved in this action were made and trust patents issued pursuant to the Nelson Act and the General Allotment Act (24 Stat. 390. See Appendix).

At this time the Indians had no control over their allotted lands in the White Earth Reservation except the right of occupancy. The title to such lands was in the United States as trustee for such Indians. The Indians had no right to sell such lands. They had no right to encumber them nor could they subject them to taxation. This brings us to the Clapp Amendments, the changes accomplished by them, and the argument upon the law and the facts.

The controversy in this case resolves itself into two main issues in the argument of which will be encompassed all the specifications of error. We urge and rely upon each and every specification of error.

I. The United States may not recover for the allottee, Isabelle Garden, the taxes upon the lands allotted to her and voluntarily paid by her.

II. The allottee and the United States are bound by the result of an action which she elected to bring in the state court to recover taxes voluntarily paid upon her allotment.

**I. The United States may not recover for the allottee, Isabelle Garden, the taxes upon the lands allotted to her and voluntarily paid by her.**

The first Clapp Amendment of June 21, 1906, 34 Stat. 325, 353, provides:

> "That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reser-

vation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The second Clapp Amendment of March 1, 1907, 34 Stat. 1034, provides:

"That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The enactment of the Clapp Amendments completely changed the status of the White Earth Indians and their relationship to their allotted lands. The language is plain and simple. The amendments deal with both adult, mixed-blood Indians and full-blood Indians. It is essential to note that the Clapp Amendments have certain provisions with reference to adult, mixed-blood Indians and other and dif-

ferent provisions with reference to full-blood Indians. The Circuit Court of Appeals, as we will point out later, failed to note this distinction.

We are concerned in the instant case with the Clapp Amendments as they affect the adult, mixed-blood Indians and their allotted lands in the White Earth Reservation. The full-blood Indians are "competent to handle their own affairs" only when the Secretary of the Interior has issued a patent in fee simple. Not so, the adult, mixed-blood Indians, title to their allotted land was conveyed to them in fee simple through operation of law. The Secretary of the Interior had no discretion to refuse a fee patent to such allottees; that he must issue them upon application as a matter of course and as a mere ministerial act; that an application was really unnecessary and merely a matter of convenience as stated in *United States* v. *Spaeth*, 24 F. Supp. 465, 469:

> "Presumably Congress determined that adult mixed-blood Indians on the White Earth Indian Reservation were capable of self-management so far as their lands were concerned. That the Government recognized the plain intendment of the Clapp Amendment is reflected by the action of the Department in issuing fee patents to the adult mixed-blood White Earth Indians. While in no instance was a fee title patent requested by these Indians, it may be noted that, in all of the allotments referred to in the stipulation, fee title patents have been issued by the Government after the passage of the Clapp Amendment to all allottees but two. It is not probable that the issuance of these fee patents were considered essential in order to give the Indians unrestricted fee title, but they were issued because it was apparently believed that fee title now existed and that a fee title patent would be more convenient for the Indian and his vendors."

This legislative declaration that they "are competent to handle their own affairs" was doubtless highly prized by

adult, mixed-bloods and as significant to them as the Emancipation Proclamation was to negro slaves. It declared a status that was the result of years of struggles and development and which should not be taken away or weakened or impaired by judicial decree except for valid and compelling reasons, none of which exist in the present case.

The Clapp Amendments conferred other equally important rights upon the adult, mixed-blood Indians without which the declaration that they "are competent to handle their own affairs" would have been meaningless. These rights were three in number. They flowed from the removal of the restrictions:

1. as to sale
2. as to incumbrance
3. as to taxation

The failure to remove restrictions as to any one of the three would be inconsistent with the declaration that such allottees "are competent to handle their own affairs." All pertain to the use, management and enjoyment of land.

The legal effect of these amendments was to pass title in fee to the adult, mixed-blood allottees.

*U. S.* v. *Waller*, 243 U. S. 452;
*U. S.* v. *Spaeth*, 24 Fed. Supp. 465.

The adult, mixed-blood Indians were determined to be competent by this "legislative judgment."

*U. S.* v. *Waller, supra.*

All the cases interpreting and construing the Clapp Amendments follow and sustain the conclusion that the White Earth adult, mixed-blood Indians are competent to manage all affairs relating to their allotments.

> "It is at once apparent from reading this act that it deals with two classes, adult mixed blood Indians, concerning whom all restrictions as to sale, incumbrance or

taxation are removed, and full blood Indians, whose right to be free from restrictions shall rest with the Secretary of the Interior, who may remove the same upon being satisfied that such full blood Indians are competent to handle their own affairs." *United States* v. *First National Bank*, 234 U. S. 245, 258.

"Before dealing with its interpretation, it is necessary to have in mind certain matters which are well settled by the previous decisions of this court. The tribal Indians are wards of the Government, and as such under its guardianship. It rests with Congress to determine the time and extent of emancipation. Conferring citizenship is not inconsistent with the continuation of such guardianship, for it has been held that even after the Indians have been made citizens the relation of guardian and ward for some purposes may continue. On the other hand, Congress may relieve the Indians from such guardianship and control, in whole or in part, and may, if it sees fit, clothe them with full rights and responsibilities concerning their property or give to them a partial emancipation if it thinks that course better for their protection. *United States* v. *Nice*, 241 U. S. 591, 598, and cases cited.

* * * * * * *

"The act thus evidences a legislative judgment that adult, mixed-blood Indians are, in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands. This may be a mistake of judgment as to some cases, and if the allegations of the bill set forth in the certificate in this case are true, it is quite evident that the Indians here involved were incapable of making an intelligent disposition of their lands. But Congress dealt with general conditions, and with these classes of Indians as a whole, and with authority over the subject has given to adult, mixed-blood Indians the full right to dispose of the lands in question. It is not for the courts to question this legislative judgment.

* * * * * * *

"In the case now before us, in whatever other respect the Government of the United States may continue to hold these Indians as wards, needing and receiving protection from its authority over their persons and property, as to the lands in question the United States, in the passage of the Clapp Amendment, evidenced its purpose to grant full power and control to the class named. As to them the Government has no further interest in or control over the lands." (*U. S.* v. *Waller, supra.*)

An examination of *Morrow* v. *United States*, 243 Fed. 854, makes clear that as to adult, mixed-blood Indians of the White Earth Reservation, the question which is determinative of the validity of a tax levy is: Has the Indian availed himself of any power which he might have under the Clapp Amendment? That is the question which the court asks itself. If the Indian has not, the tax must fall. Conversely, it necessarily follows that if he has, the tax must stand. Isabelle Garden availed herself of a right which she had under the Clapp Amendment. She voluntarily paid the taxes upon her allotment. Under 24 Stat. 390 and 34 Stat. 182, she, as fee owner, made use of the State courts to bring an action to recover the taxes paid. The lifting of the restrictions upon her allotment by the Clapp Amendment was made effective by Isabelle Garden's voluntary act in paying her taxes.

"• • • the passage of the Clapp Act, June 21, 1906 (34 Stat. 353), which provided for the removal of all restrictions as to sale, encumbrance, or taxation for allotments within the White Earth Indian Reservation held by adult, mixed-blood Indians, and which further provided that the trust deeds were sufficient for such allottee or allottees to pass title in fee simple, could not disturb this vested right to be free from taxation during the twenty-five year period unless the Indian

willingly changed his status by acceptance of the rights and privileges contained in said amendment.

* * * * * * *

"(7) The removal of the restriction of alienation, however, does not necessarily interfere with or imperil the immunity from taxation. That is a vested right. But while it was necessary to obtain the Indian's consent to divest him of the guaranteed non-taxable land during the twenty-five year period, it was not necessary to obtain his consent to clothe him with authority to alienate his land." (*U. S.* v. *Spaeth*, 24 Fed. Supp. 465, 467.)

The Supreme Court of Minnesota followed the decision in *Waller* v. *U. S., supra*, when in construing the Clapp Amendments in *Baker* v. *McCarthy*, 145 Minn. 167, 170, 176 N. W. 643, it held:

"We think it is the general view that the issuance of a fee-simple patent operates, by implication, to emancipate the Indian from Federal guardianship and jurisdiction. Luck Land Co. *v.* Dickson, 132 Minn. 396, 157 N. W. 655, affirmed 242 U. S. 371, 37 Sup. Ct. 167, 61 L. Ed. 371. We hold that the same result was accomplished by the provision of the Clapp amendments converting the trust deeds theretofore issued in the case of adult mixed-bloods into instruments of fee-simple title, see United States *v.* Waller, 243 U. S. 452, 37 Sup. Ct. 430, 61 L. Ed. 843, and that the Clapp amendments by implication gave to the probate courts of this state jurisdiction to administer the estates and determine the heirs of an adult mixed-blood allottee, whether death occurred before or after these amendments."

Isabelle Garden willingly changed her status by voluntarily paying the taxes upon her allotment.

With the law as settled in the foregoing cases in our minds let us re-examine the pertinent language of the Clapp Amendment.

> "That all restrictions as to sale, encumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult, mixed-blood Indians, are hereby removed * * *."

This part of the amendment does three things:

1. It removes the restriction as to sale.

2. It removes the restriction as to encumbrance.

3. It removes the restriction as to taxation of allotments of adult, mixed-blood Indians.

The order in which these restrictions are lifted is significant. The Congress had declared the adult, mixed-blood Indians to be "competent to handle their own affairs." To implement this declaration, the Congress gave to these Indians the first and greatest legal right. The right to sell their allotted lands. Next, it gave them the right to encumber the lands which was undoubtedly of second greatest importance legally. Last, and perhaps the least of importance from the legal point of view but undoubtedly the greatest from the standpoint of practical importance to the adult, mixed-blood Indians who wished while retaining their lands to have the benefits of county government including schools and roads, the right to subject their lands to taxation. The importance of this right is emphasized by the fact that all lands in Mahnomen County were originally allotted lands.

The inclusion of the third element, taxation, by the Congress was done with deliberation. Its purpose must have been to lift so far as within the power of Congress, the

restriction against taxation. Congress had done its part to make this provision as to taxation effective required affirmative action by the Indian. Isabelle Garden took that action when she voluntarily paid the taxes upon her allotment. It is axiomatic that it is the duty of the courts to give effect to all the provisions of the Clapp Amendment.

The Clapp Amendments are a fully consummated release by the United States of America of all of its control as trustee, of the allotted lands and the acts of the adult, mixed-blood Indians relating thereto. The United State recognized the competency of these Indians and their right to alienate or encumber their lands or subject them to taxation. This was all that the United States, bound as it was by its treaty obligation, could do. It could not divest these Indians of their vested right to have their lands immune from taxation or seizure for debt. As to the adult, mixed-blood Indians, the Clapp Amendments were permissive. The Congress gave them the right, if they wished and only if they wished, to waive their vested right to have their allotted lands immune from taxation and to subject them to taxation.

The conceded and inevitable conclusion is that such adult, mixed-blood Indians had the full right to sell, encumber, dispose of and deal with their allotted lands in any way they saw fit and without necessity of obtaining approval or consent of anyone just as any other competent fee owner might do.

All restrictions upon the adult, mixed-blood Indians' right to consummate voluntarily the "sale, encumbrance, or *taxation* for allotments" were by the express language of the Clapp Amendment removed. (Italics ours.) In the case at bar the allottee, Isabelle Garden, voluntarily subjected her allotment to taxation. She freely and voluntarily paid these taxes. She shared in the benefits which they provided. We have found no statute or court decision author-

izing the recovery of taxes so paid. The United States has no right of recovery in this case.

**Tax Payments Were Voluntary.**

There is neither allegation nor proof that the tax payments here involved were other than voluntary. The District Court appears to have so regarded them as appears by its language (R. 28).

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

And the Circuit Court also appears to have considered the payments voluntary by its language (R. 50):

> "The County also contends that it should be held that the tax payments which it obtained from Isabelle Garden were voluntary payments and it is presented that under Minnesota law the taxpayer may not recover such voluntary payments of taxes by action in the courts of Minnesota. In this connection stress is laid upon the extent to which the Clapp Amendments operated to emancipate the adult mixed-blood Indians to whom it related, and it is argued that they became in effect sui juris and therefore subject to all the consequences of their acts applicable to others in the state. If others are deemed to waive all objection to illegal taxes by voluntarily paying the same, so it is said should the Indians."

The Circuit Court then apparently from the following language:

> "The argument would not be considered without force if the case was of first impression" (R. 51).

concludes that it is foreclosed by previous decisions from holding that the United States cannot recover taxes volun-

tarily paid by Isabelle Garden. This conclusion is directly contrary to the decision of this court in *Ward* v. *Love County*, 253 U. S. 17, 22, wherein this court said:

> "We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. But we are unable to accept its decision in other respects."

There is no permissive statute in Minnesota. Under Minnesota law taxes voluntarily paid cannot be recovered.

*Falvey* v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;

*Gould* v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303, 530.

The Circuit Court therefore erred in assuming that the instant case was controlled by decisions involving different laws and situations and in failing to construe and apply to the facts of the instant case the pertinent provisions of the Clapp Amendments themselves which are the applicable law and must control.

The difference between the Clapp Amendments and the statutes involved in the cases relied upon by the Circuit Court of Appeals is obvious upon comparison.

We shall discuss the cases cited by the Circuit Court upon this point seriatim.

The statute involved in *Choate* v. *Trapp*, 224 U. S. 665, is the act of May 27, 1908, 35 Stat. 312. See Appendix. One "section provided that land from which restrictions had been removed should be subject to taxation." P. 670. Thereupon the state sought to assess taxes upon land without the owner's consent. This court held that this could not be done. If, however, the owner had not objected but had paid voluntarily as in the instant case, this court would

have had an entirely different question before it. The question that is in the instant case. In that case the statute provided directly that the lands should be "subject to taxation." In the instant case, the statute is permissive and operates only with the consent of the Indian who has been declared by the Congress to be competent for that purpose.

In *Board of County Commissioners of Caddo County, Oklahoma,* v. *United States,* 10 Cir., 87 F. 2d 55, the case is determined upon the fact that there was no acceptance of the fee patent. Under the Clapp Amendments the fee title was vested in the adult, mixed-blood Indian, but the lifting of the restrictions was dependent upon the voluntary act of the Indian. In the *Caddo County* case, the court found that the Indian did not consent but on the contrary objected, evidencing that objection by paying the taxes under protest.

The Circuit Court of Appeals also cites *Morrow* v. *United States,* 243 Fed. 854. This case involves the Clapp Amendments. It is an action to restrain the collection of taxes upon allotted land within the White Earth Reservation. Obviously, it does not involve taxes voluntarily paid by an adult, mixed-blood Indian. That this fact was of importance appears from the following language on page 858:

> "His rights are vested and are impervious to alteration *against his will* except through the sovereign power of eminent domain. One of these rights was freedom from state and local taxation." (Italics ours.)

The implication is that he could have voluntarily consented to taxation of his allotted land.

The last case cited at this point by the Circuit Court of Appeals is *Glacier County, Montana,* v. *United States,* 99 F. 2d 733. This is an action to quiet title and to recover taxes paid. The statute involved is the act of May 8, 1906, 34 Stat. 182, see Appendix. Under this act, the Secretary of the Interior issued patents to individual Indians whom

he thought competent. In the Clapp Amendments, the Congress determined certain Indians as a class to be competent and caused title in fee simple to their allotted lands to pass to such Indians. The *Glacier County* case and the cases therein cited turn upon the proposition that under the act there involved title in fee could be conveyed to the Indian only upon his request.

The Circuit Court of Appeals cites the case of *Bryan County, Okla.*, v. *United States*, 123 F. 2d. 782. But examination will show that the statute involved in that case is quite different from the Clapp Amendments. It is the Act of May 27, 1908, 35 Stat. 312, and for convenience we print it in the Appendix to this Brief. It will be noted that the first section pertains only to "alienation or incumbrance" and not to taxation and does not deal with removal of restriction as to taxation at all. Section 4 deals with that and specifically provides that the lands involved "shall be subject to taxation." Of course, this wholly ignores the vested right of the Indian to tax exemption and has been held invalid for that reason. The result is that in Oklahoma the restrictions on taxation stand unchanged and unimpaired by any valid congressional enactment. This is not the situation under the Clapp Amendments.

The Clapp Amendments provide "that all restrictions as to sale, incumbrance, or taxation for allotments • • • held by adult, mixed-blood Indians, are hereby removed." Unlike the Oklahoma statute, this does not attempt to specifically subject the allotted lands to taxation. As stated in the *Waller* case, supra, it (the Clapp Amendments) is a "legislative judgment" that such Indians are competent. As construed by the *Morrow* and *Spaeth* cases, supra, said amendments did not impair the vested right of such allottees to tax exemption and notwithstanding such amendments such allotments could not be legally taxed during

such trust period against the will or without the consent
the Indian. But the implication is clear that the inhibit
against such taxation so far as the United States is c
cerned is removed and that the Indian might consent a
subject his allotment to taxation if he so desired. A
as a member of a community that had organized a coun
and appreciating the need of roads, schools and other be
fits that come only through the expenditure of tax mon
and appreciating also that there would be no adequate t
money unless persons in his class paid taxes, such India
were entirely justified and wise in consenting to taxati
and in paying taxes as many did and as Isabelle Gard
did. So construed, the Clapp Amendments do not impa
vested rights and are valid. But they do remove restr
tions as to taxation so far as the United States is co
cerned.

An Indian may waive and in this case did waive in t
same way that other citizens may waive vested rights.

*Sweet* v. *Schock*, 245 U. S. 192

*Fink* v. *County Commissioners*, 248 U. S. 399

The court will note the reference in the opinion of th
Circuit Court of Appeals to the statement in the first stip
lation of facts "that said land was not legally taxab
prior to the year 1928" (R. 13). We respectfully subm
that this stipulation must be read together with the secon
stipulation of facts setting out the record of dates of pa
ments of taxes (R. 13), and the proceedings thereafte
From these it clearly appears that it should have read-
"That said land was not legally taxable prior to the yea
1928 *without the consent of the allottee.*" (Part in italic
supplied.)—and that it did not do so was through inad
vertence since that was clearly the theory upon which th
case was submitted, briefed, and argued in the Distric
Court and Circuit Court of Appeals. This is confirme
by the District Court when it said (R. 28):

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

We think that the two stipulations and the record fairly present the question whether taxes so paid can be recovered. This is the very issue which all parties are seeking to determine by this litigation.

It appears from the language of the trial court, and this is equally true of the Circuit Court, that it failed to confine itself to the provisions of the Clapp Amendment and erroneously applied the statute applicable to Oklahoma Indians. There is a very material difference. The applicable statute in the Oklahoma case, 35 Stat. 312, lifts the restrictions only as to alienation and encumbrance. It also provides that the land so unrestricted shall be subject to taxation. The Oklahoma statute ignores the vested right of the Indian. The Clapp Amendment does not, but merely removes the restriction upon the power of the Indian to subject his land to taxation if he so desires. The Oklahoma case cited by the trial court therefore does not sustain his conclusion as to the White Earth Indians.

The fundamental error of the trial court and the Circuit Court was in assuming that the trust as to Isabelle Garden continued for twenty-five years. The trust terminated when she elected to voluntarily pay the taxes upon her allotment and thereby "willingly changed his (her) status by acceptance of the rights and privileges contained in said (Clapp) amendment." *United States* v. *Spaeth, supra.*

The trial court held properly that the taxes paid after the expiration of the trust period could not be recovered because Isabelle Garden was emancipated (R. 28). This was erroneously reversed by the Circuit Court. Both

courts in permitting the recovery of the money paid during the trust period failed to recognize that at that time Isabelle Garden was also emancipated. This was the trial court's fundamental error because the Clapp Amendment was a "legislative judgment" that Isabelle Garden was capable of managing her own affairs as to her allotment not after the trust period but at the time of the passage of the amendment. See *U. S.* v. *Waller*, 243 U. S. 452, 462. To hold otherwise is to nullify the Clapp Amendment as the restrictions would have lifted without it at the expiration of the trust period. The trial court's reasoning in holding that the money paid after the trust period cannot be recovered is equally persuasive when applied to the payments during the trust period. The Circuit Court mistakenly took the position that the obligation of the government is not discharged until the Indian applies for the fee patent and alienates the land (R. 66). The court fails to distinguish between the two separate provisions of the Clapp Amendments. The one the court relies upon relates to full-blooded Indians. The Circuit Court overlooked the other provision relating to adult, mixed-blood Indians, such as Isabelle Garden. None of the taxes paid should be recovered.

The trial court cites *Warren* v. *Mahnomen County*, 192 Minn. 464, 257 N. W. 77, as authority for the proposition that:

> "The Supreme Court of Minnesota has recognized the right of a mixed-blood Chippewa Indian of the White Earth Indian Reservation to maintain a suit against a county to recover taxes illegally imposed upon his allotment during the trust period" (R. 27).

We entirely agree with this statement. We also agree with the conclusion of the District Court of Minnesota in the case brought by Isabelle Garden that she could not recover the taxes paid by her. The distinction between the

two cases is that in the Warren case the payments were made involuntarily while in the Garden case the payments were made voluntarily. Under Minnesota law taxes voluntarily paid cannot be recovered.

The answer is clear that the United States does not owe a duty to an emancipated Indian to recover taxes voluntarily paid during the twenty-five year trust period.

**II. The allottee and the United States are bound by the result of an action which she elected to bring in the state court to recover taxes voluntarily paid upon her allotment.**

Isabelle Garden as an adult, mixed-blood Indian is a competent person.

*U. S.* v. *Waller, supra*

The fee title to the lands here involved passed to Isabelle Garden upon passage of the Clapp Amendment.

*U. S.* v. *Spaeth, supra*

The voluntary payment of the taxes by Isabelle Garden lifted the restriction upon the land here involved.

See discussion under I.

Upon these facts it appears that the state court was exercising jurisdiction conferred upon it by the Clapp Amendment, supra, and the Acts of Feb. 8, 1887, C. 119, Sec. 6, 24 Stat. 390; and of May 8, 1906, 34 Stat. 182. The judgment of the state court as a court of competent jurisdiction is binding upon the United States.

*U. S.* v. *Lee*, 108 Fed. (2nd) 936;

*U. S.* v. *Richards*, 27 Fed. Rep. (2nd) 284;

*Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 78;

*Davis* v. *Davis*, 305 U. S. 32;

*Helvering* v. *Rhodes' Estate* (C. C. A. 8, 1941), 117 Fed. (2nd) 509;

*Missouri Pacific Transportation Co.* v. *Priest* (C. C. A. 8, 1941), 117 Fed. (2nd) 32;

*Engebretson* v. *West*, (C. C. A. 8, 1940), 111 Fed. (2nd) 528, 532;

*Holley* v. *General American Life Insurance Co.* (C. C. A. 8, 1939), 101 Fed. (2nd) 172;

*Prebyl* v. *Prudential Insurance Co. of America* (C. C. A. 8, 1938), 98 Fed. (2nd) 199;

*Continental National Bank* v. *Holland Banking Co.* (C. C. A. 8), 66 Fed. (2nd) 823.

**Conclusion.**

Applying the usual rules of construction, among them:

(1) that every part of the enactment shall be given effect;

(2) the validity of the enactment shall be sustained if possible and if, of two possible constructions, one sustains and the other invalidates, the former is favored;

(3) if the Act has been previously construed effect should be given to such construction under the rule of *stare decisis* unless the prior construction is obviously wrong;

(4) effect should be given to the background and purpose of the enactment.

the Clapp Amendments result in three things:

1. A legislative judgment that "adult, mixed-blood Indians are, in the respects realt with in the act, capable of managing their own affairs."

2. A grant to adult, mixed-blood Indians of full power and control over the lands in question, including the right to subject them to taxation.

3. Immediately passed title in fee simple to the adult, mixed-blood Indians, including Isabelle Garden.

It is well recognized in the decisions that a principal object of Indian supervision and legislation is to bring them to a state of competency.

*United States* v. *Nice*, 241 U. S. 591, 595;
*United States* v. *Waller, supra;*
*Bryan County, Okla.*, v. *United States, supra.*

The Act of May 8, 1906, gave the state courts jurisdiction over adult, mixed-blood Indians and their allotted lands when, as Isabelle Garden did by her voluntary payment of her taxes, they have accepted the rights and privileges granted by the Clapp Amendment.

Isabelle Garden as a competent person is bound by the result of the state court action brought by her.

The United States "has no further interest or control over the lands." *United States* v. *Waller, supra.*

Taxes voluntarily paid cannot be recovered in the State of Minnesota.

The court below erred in holding that the United States can recover the taxes voluntarily paid by Isabelle Garden.

Respectfully submitted,

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## APPENDIX.

Section 5 of the General Allotment Act of February 8, 1887, c. 119, 24 Stat. 389, 25 U. S. C. sec. 348, provides:

That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period.

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * * * *

Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; • • •.

The Act of May 27, 1908, 35 Stat. 312, provides:

Chap. 199. An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions.

• • • • • • •

Sec. 4. That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: *Provided,*

That allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law.

* * * * * * *

The Act of May 8, 1906, 34 Stat. 182, provides:

Chap. 2348. An Act to amend section six of an Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an Act approved February eighth, eighteen hundred and eighty-sever, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," be amended to read as follows:

"Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges,

and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: Provided, That the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, That until the issuance of fee simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of this Act shall not extend to any Indians in the Indian Territory."

* * * * * * *

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No. 684

# In the Supreme Court of the United States

OCTOBER TERM, 1942

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER

*v.*

THE UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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---

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---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The opinion and supplemental memorandum of the district court (R. 24–33) are not officially reported. The opinion of the circuit court of appeals (R. 61–67) is reported in 131 F. (2d) 936.

### JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered December 7, 1942 (R. 67–68). The petition for a writ of cer-

tiorari was filed January 29, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether the United States, in a suit brought after the expiration of the trust period, may recover taxes wrongfully assessed against a tax-exempt Indian allottee, notwithstanding the fact that the taxes were "voluntarily" paid by the allottee, in some cases before and in others after the expiration of the trust period, and notwithstanding the fact that a state court of Minnesota had previously sustained a demurrer to a complaint filed by the allottee for their recovery.

## STATUTES INVOLVED

The pertinent provisions of the General Allotment Act of February 8, 1887, 24 Stat. 388 (25 U. S. C. 348); the Nelson Act of January 14, 1889, 25 Stat. 642; the first Clapp Amendment of June 21, 1906, 34 Stat. 325; and the second Clapp Amendment of March 1, 1907, 34 Stat. 1034, are printed in the Appendix, *infra*, pp. 15–18.

## STATEMENT

Between 1902 and 1911, the United States granted allotments of land to certain mixed-blood Chippewa Indians of the White Earth Indian Reservation in Mahnomen, Becker, and Clearwater Counties, Minnesota, and issued trust pat-

ents to them in the usual form (R. 18, 20, 24, 25). In these patents the United States agreed to hold the lands in trust for a period of twenty-five years, and then to convey them to the allottees in fee, "discharged of said trust and free of all charge or encumbrance whatsoever" (R. 20, 25),[1] a provision which has been repeatedly construed as conferring upon the Indians a vested tax exemption of which they cannot be deprived without their consent. *United States* v. *Rickert*, 188 U. S. 432; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8).[2]

Notwithstanding these decisions, the Chippewa trust allotments were placed on the tax rolls of

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[1] General Allotment Act of February 8, 1887, sec. 5, 24 Stat. 389 (25 U. S. C. 348).

[2] See also *United States* v. *Benewah County, Idaho*, 290 Fed. 628 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55 (C. C. A. 10); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232 (C. C. A. 9); *United States* v. *Lewis County, Idaho*, 95 F. (2d) 236 (C. C. A. 3); *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733 (C. C. A. 9); *Board of Com'rs* v. *United States*, 100 F. (2d) 929 (C. C. A. 10); *United States* v. *Board of Com'rs*, 6 F. Supp. 401 (W. D. Okla.); *United States* v. *Board of County Com'rs*, 13 F. Supp. 641 (N. D. Okla); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *Iyall* v. *Yakima County*, 130 Wash. 537, 228 Pac. 513 (1924); 54 Int. Dec. 65 (1932); cf. *Ward* v. *Love County*, 253 U. S. 17, *Carpenter* v. *Shaw*, 280 U. S. 363, *Board of Com'rs of Tulsa County, Okl.* v. *United States*, 94 F. (2d) 450 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635 (N. D. Okla.).

Mahnomen, Becker, and Clearwater Counties prior to the expiration of the twenty-five year trust periods (R. 22–24). A number of allottees, ignorant of their legal rights and faced with the threat of having their lands sold for taxes, paid the assessments; those that did not lost their lands through tax sales (R. 21, 23).

In order to protect the rights of its Indian "wards," the United States brought a class suit in 1914 to enjoin the tax officials of Becker County from making further assessments and collections, and in 1917 the Circuit Court of Appeals for the Eighth Circuit affirmed a judgment granting the Government the relief requested. *Morrow* v. *United States*, 243 Fed. 854. A number of successful suits were brought in succeeding years by the allottees and by the United States to recover previous collections and to prevent other assessments. See, *e. g.*, *United States v. Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).

The few remaining tax claims were finally "lumped together" in the present suits which the United States brought in 1940 against Mahnomen, Becker and Clearwater Counties for the cancellation of all taxes levied prior to the expiration of the trust periods, and for refunds in those instances where the taxes were paid by the allottees (R. 2–8, 24).

Seven parcels were included in the complaint filed by the Government in the Mahnomen County

case. Parcels 1, 3, and 5 were dismissed with the Government's consent, when it developed that taxes levied against parcel 1 before and after the expiration of the trust period in 1927, had been subsequently compromised by the allottee for less than the amount of the taxes assessed after 1927; that the taxes levied against parcel 3 had "been abated and cancelled upon application" to the county; and that the allottee of parcel 5 had lost his tax exemption by applying for and receiving a fee simple patent (R. 20–23). The county stipulated that parcels 2, 4, and 6 were not legally taxable prior to the expiration of the trust periods (R. 13–15) and did not seriously question the Government's right to have such taxes and enforcement proceedings declared illegal and void. The only serious contest arose in connection with parcel 7. There the United States issued a trust patent to Isabelle Garden in December 1902. The county stipulated that this tract "was not legally taxable prior to the year 1928" when the trust period expired (R. 14). Taxes were nevertheless levied against this allotment commencing in 1911, the year Isabelle Garden reached her majority. Taxes for the period from 1911 to 1921, inclusive ($405.97), were paid in full by the allottee prior to 1922. The allottee discharged the taxes for 1922 to 1925 and 1926 to 1934 by the purchase in 1936 of State Assignment Certificate No. 76 in the amount of $33.22 and Tax Assignment Cer-

tificate No. 232 in the amount of $145.93 (R. 15–16, 21–22).

The cases against all three counties were submitted on agreed statements of fact (R. 24, 28). The trial court entered judgments ordering the cancellation of all taxes levied during the trust periods, the restoration to the allottees of lands sold for nonpayment of taxes, and the refund of all taxes levied and paid before the expiration of the trust periods. It refused to order a refund of taxes levied before, but not paid until after, the trust period expired (R. 33–35).

Becker and Clearwater Counties acquiesced in these judgments. Mahnomen County, however, elected to appeal from that portion of the judgment directing it to refund the taxes paid between 1911 and 1921 ($405.97) on parcel 7. The Government then filed a cross appeal from that portion of the judgment denying recovery of taxes levied on parcel 7 between 1922 and 1925 and discharged by the allottee in 1936 ($33.22). The circuit court of appeals held that the United States was entitled to recover all taxes in question, whether paid before or after the expiration of the trust period (R. 62–67).

## ARGUMENT

Although conceding that parcel 7, allotted to Isabelle Garden by a trust patent in December 1902, "was not legally taxable prior to the year 1928" (R. 14; Pet. 6, 12), petitioner nevertheless

contends that taxes collected from the allottee in derogation of her tax exemption are not recoverable by the United States for two reasons: (1) because the taxes were "voluntarily" paid by the allottee (Pet. 6, 7–8, 12–15); and (2) because the United States is bound by the allottee's unsuccessful attempt to recover these taxes in proceedings which she brought in the state courts in 1923 (Pet. 6, 15, 17). Both contentions are without merit.[3]

1. Petitioner rightly concedes (Pet. 6, 12) that the trust patent which the United States issued to Isabelle Garden in 1902, pursuant to the General Allotment Act of 1887, 24 Stat. 388 (25 U. S. C. 348), and the Nelson Act of 1889, 25 Stat. 642, conferred on her a twenty-five-year tax exemption which could not be revoked without her consent. *United States* v. *Rickert*, 188 U. S. 432; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).[4] It is petitioner's contention that Isabelle Garden voluntarily relinquished her exemption and paid the taxes in order that she might become an emancipated Indian and manage her allotment as she saw fit (Pet. 12–15). But that right was

[3] The contentions advanced by Mahnomen County are essentially the same as those urged in *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

[4] See also cases cited in n. 2, *supra*, p. 3.

hers under the Clapp Amendments of 1906 and 1907 (34 Stat. 325, 353, 1034) whether she paid the taxes or not.

It is true that the original trust patent which conferred on Isabelle Garden a twenty-five year tax exemption likewise imposed restrictions on her right to alienate the allotment. But the Clapp Amendments, effective as to Isabelle Garden when she reached her majority in 1911, declared that "all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation * * *, held by adult mixed-blood Indians, are hereby removed" Act of June 21, 1906, 34 Stat. 325, 353; Act of March 1, 1907, 34 Stat. 1034. These amendments were ineffective insofar as they attempted to subject these trust allotments to taxation, a fact made clear by this Court in construing identical language[5] in *Choate* v. *Trapp*, 224 U. S. 665, 673; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; see also *Marrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Spurth*, 24 F. Supp. 465 (Minn.). But these amendments did effectively remove all restrictions on alienation because, as this Court has pointed out, exemptions from taxation and nonalienability are "two separate and distinct subjects." *Choate* v. *Trapp*, 224 U. S. 665, 673. The former is a property right protected by the Federal Con-

[5] Act of May 27, 1908, c. 199, 35 Stat. 312.

stitution against either state or federal interference; the latter is an expression of legislative policy which Congress, by virtue of its plenary power over Indian affairs, can change at will, with or without the allottee's consent. *Williams* v. *Johnson*, 239 U. S. 414, 420; *United States* v. *Benewah County*, 296 Fed. 628, 631 (C. C. A. 9); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 401 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468, 469 (Minn.); 49 L. D. 348, (1922).

Since restrictions on alienation can be removed by legislative fiat, it follows that an Indian allotment may be unrestricted and at the same time tax exempt. Such was the situation in *Choate* v. *Trapp*, 224 U. S. 665, 669, 670, 673; *English* v. *Richardson*, 224 U. S. 680; *Board of Com'rs of Tulsa County, Okl.* v. *United States*, 94 F. (2d) 450, 451 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635, 636 (N. D. Okla.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468 (Minn.); *Whitmire* v. *Trapp*, 33 Okla. 429, 126 Pac. 578 (1912); *Board of Com'rs of Okfuskee County* v. *Hutton*, 72 Okla. 223, 179 Pac. 922 (1919); *Grotkop* v. *Stuckey*, 140 Okla. 178, 282 Pac. 611 (1929); 49 L. D. 348, 351–352 (1922); 50 L. D. 691, 693 (1924); see Act of June 28, 1898, c. 517, 30 Stat. 495, 507. Since there is nothing to prevent an allottee from simultaneously possessing an unrestricted fee and a tax immunity,

et to suggest (Pet. 3, 12–15) that Isa-
voluntarily paid taxes which she did
pay in return for a right of alienation
already had by reason of the Clapp
s.

seems evident that the taxes were not
allottee for any purpose other than
her allotment from being sold for un-
She was aware of the consequences
ent, as well as the apparent futility
to the levies. Payments made under
es which prevail in these types of
ly, where the Indians run the risk of
allotments unless the taxes are paid.
eemed "voluntary payments." *Ward*
*nty*, 253 U. S. 17, 23; *Glacier County*,
*ited States*, 99 F. (2d) 733, 735 (C. C.
*ed States* v. *Nez Perce County*, 95 F.
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192 Minn. 464, 257 N. W. 67 (1934).
tion that the taxes are not recoverable
paid under protest, formal or other-
sound because the courts have re-
ld that "The United States is not
from recovering taxes paid without
an Indian ward." *United States* v.
*County*, 95 F. (2d) 232, 236 (C. C. A.

*Board of Com'rs of Caddo County, Okl.* v.
87 F. (2d) 55, 57 (C. C. A. 10); *United States*,
*ty*, 14 F. (2d) 784, 791 (S. D. 1926), affirmed,

The language in *Ward* v. *Love County*, 253 U. S. 17, 22, relied upon by petitioner (Pet. 7, 14) is not in point because in that case the United States was not the party plaintiff. When the litigation is commenced by the Indians themselves, they, like other taxpayers, may be subject to local statutes of limitation, statutes governing protests, etc. But these statutes are not applicable when suit is brought by the United States in its sovereign capacity to vindicate a federal policy. Cf. *United States* v. *Chehalis County*, 217 Fed. 281, 285 (W. D. Wash.); *United States* v. *Dewey County*, 14 F. (2d) 784, 791 (S. D.). Where a federal right is involved and the United States is the party plaintiff, "money got through imposition" may be recovered back, whatever be the state law. Cf. *Ward* v. *Love County*, 253 U. S. 17, 24.

2. A federal right is clearly involved in the instant case. In the trust patent which it issued to Isabelle Garden in 1902, the United States agreed to convey the allotment to her at the end of twenty-five years "free of all charge or incumbrance." The Government has the right and the duty to see that its consensual obligations are properly discharged and its declared policies fully

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26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649; *United States* v. *Board of County Com'rs*, 13 F. Supp. 641, 643 (N. D. Okla.); *United States* v. *Chehalis County*, 217 Fed. 281 (W. D. Wash.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 466, 257 N. W. 77 (1934).

respected. To this end, it may invoke the aid of its courts "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota*, 270 U. S. 181, 194; *United States* v. *Rickert*, 188 U. S. 432, 444 *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. The interest of the United States in having its obligations and policies observed "is one which is vested in it as a sovereign." *United States* v. *Minnesota*, 270 U. S. 181, 194.

The duty of the United States to have its guarantee of tax immunity respected is a continuing obligation even though the allottees have become citizens, the restrictions on alienation have been removed, and the Indians have been otherwise emancipated from a wardship status. *Cramer* v. *United States*, 261 U. S. 219, 232; *Heckman* v. *United States*, 224 U. S. 413, 437; *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819; *Board of Com'rs of Tulsa County, Okl.*, v. *United States*, 94 F. (2d) 450, 452 (C. C. A. 10); *United States* v. *Sherburne Mercantile Co.*, 68 F. (2d) 155, 158 (C. C. A. 9). This duty to recover taxes unlawfully exacted from an allottee is based upon the legal relation of trusteeship and springs from the obligation contained in the terms of the trust to preserve the land so that at the end of the trust period it can be passed to the beneficiary "free of

all charge or incumbrance." *Morrow* v. *United States*, 243 Fed. 854, 859 (C. C. A. 8); *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (W. D. Wash.). Hence, the fact the present suit was not brought and that some of the taxes were not paid until after the expiration of the trust period is immaterial.

Furthermore, the interest of the United States in having its obligations and policies respected, being one which is vested in it as a sovereign (*United States* v. *Minnesota*, 270 U. S. 181, 194), cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria*, 271 U. S. 432, 444; *Sunderland* v. *United States*, 266 U. S. 226, 232; *Privett* v. *United States*, 256 U. S. 201, 204; *Bowling* v. *United States*, 233 U. S. 528, 534. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to this action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. That case is precisely in point. There the allottees assigned their tax-refund claims to one Broadwell who brought suit to recover the taxes in the state courts of Oklahoma. The suit was defeated by a plea of limitations. *Broadwell* v. *Board of Com'rs of Bryan County*, 88 Okla. 147, 211 Pac. 1040 (1922), certiorari

denied, 262 U. S. 750. But that judgment did not prevent the United States from subsequently recovering those taxes in its own courts. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

## CONCLUSION

The decision of the Circuit Court of Appeals is in accord with the applicable decisions of this Court. It raises no new question of substance and presents no conflict. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1943

# APPENDIX

Section 5 of the General Allotment Act of February 8, 1887, c. 119, 24 Stat. 388, 389, provides:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period (25 U. S. C. 348.) * * *

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * *

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to

Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; * * *.

The first Clapp Amendment of June 21, 1906, c. 3504, 34 Stat. 325, 353, provides:

> That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The second Clapp Amendment of March 1, 1907, c. 2285, 34 Stat. 1034, provides:

> That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall

be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

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No. 684

# In the Supreme Court of the United States

OCTOBER TERM, 1942

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
PETITIONER

*v.*

THE UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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Act of February 10, 1942, 56 Stat. 87 (25 U. S. C. A. 352c) 22
Miscellaneous:
1 Annual Report, Sec'y. Int. 1920, p. 9 22
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54 Int. Dec. 65 (1932) 15
49 L. D. 348 (1922) 19
50 L. D. 691 (1924) 19
19 Op. A. G. 161 (1888) 4, 15
Report of Commissioner of Indian Affairs:
1917, pp. 3, 5 22
1918, p. 22 22
1926, p. 10 22

# In the Supreme Court of the United States

OCTOBER TERM, 1942

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No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION, PETITIONER

*v.*

THE UNITED STATES OF AMERICA

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinion and supplemental memorandum of the district court (R. 22–30) are not officially reported. The opinion of the circuit court of appeals (R. 47–52) is reported in 131 F. (2d) 936.

### JURISDICTION

The judgment of the circuit court of appeals was entered December 7, 1942 (R. 53). The petition for a writ of certiorari was filed January 29, 1943, and granted March 15, 1943. The jurisdiction of this Court rests on Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

### QUESTION PRESENTED

Whether the United States, in a suit brought after the expiration of the trust period, may recover taxes wrongfully assessed against a tax-exempt Indian allottee, notwithstanding the fact that the taxes were "voluntarily" paid by the allottee, in some cases before and in others after the expiration of the trust period, and notwithstanding the fact that a state court of Minnesota had previously sustained a demurrer to a complaint filed by the allottee for their recovery.

### STATUTES INVOLVED

The pertinent provisions of the General Allotment (Dawes) Act of February 8, 1887, 24 Stat. 388 (25 U. S. C. 348); the Nelson Act of January 14, 1889, 25 Stat. 642; the first Clapp Amendment of June 21, 1906, 34 Stat. 325; and the second Clapp Amendment of March 1, 1907, 34 Stat. 1034, are printed in the Appendix, *infra*, pp. 27–30.

### STATEMENT

In the post-Civil War period, the various bands of Chippewa Indians occupied in communal ownership twelve reservations in the State of Minnesota. *Chippewa Indians* v. *United States*, 301 U. S. 358, 361. As homestead lands became scarce in the public land states of the West, white

men became interested in these large tracts of valuable agricultural and timber lands little used by the Chippewas, with the result that Congress in 1889 directed the President to appoint three commissioners "to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill" individual allotments. Nelson Act of January 14, 1889, sec. 1, 25 Stat. 642. Congress further provided (sec. 3) that members of the various bands, except those of the Red Lake Reservation, should "be removed to and take up their residence on the White Earth Reservation, and * * * be allotted lands in severalty" in conformity with the General Allotment (Dawes) Act of February 8, 1887, 24 Stat. 388. Section 5 of that Act contained a declaration that the United States would hold the allotment in trust for the benefit of the individual allottee for a period of twenty-five years and at the expiration of said period convey the land to said Indian or his heirs "in fee, discharged of said trust and free of all charge or incumbrance whatsoever."

This proposal by Congress for a further cession of tribal lands, the substitution of individual for tribal ownership, and the sale of surplus lands not needed for allotment purposes, was not enthusiastically received by the Chippewas. House Ex. Doc. No. 247, 51st Cong. 1st sess. (Ser. No. 2747), pp. 1, 66–193 (1890). The commissioners persisted, however, in the negotiations. They explained to the Indians the provisions of the Nelson Act of 1889 and the Dawes Act of 1887. *Ibid.*, pp. 86, 153, 157, 165. Buttressed by this Court's construction of similar language in the case of *The Kansas Indians*, 5 Wall. 737, 760, and an opinion of the Attorney General construing the very provision in question (19 Op. A. G. 161, 166–169 (1888)), the commissioners assured the Indians that their allotments would not be taxed for twenty-five years. House Ex. Doc. No. 247, 51st Cong. 1st sess. (Ser. No. 2747), pp. 93, 103, 104, 138; cf. pp. 97, 112.[1] Having been told that the Nelson Act would "be carried out in accordance with the explanations" (*ibid.*, p. 110), the Indians finally agreed to relinquish their large communal holdings, to accept individual trust allotments, and to permit the sale of surplus lands to white settlers. *Ibid.*, pp. 1–2, 27–66. On March 4, 1890, the President approved each instrument of cession

[1] This construction of Section 5 of the General Allotment (Dawes) Act of 1887 was subsequently confirmed by this Court in *United States* v. *Rickert*, 188 U. S. 432, 438–439.

and transmitted to Congress a statement of his approval, together with the commission's report and related documents. Congress in turn indicated its approval by the Act of August 19, 1890, 26 Stat. 336, 357, making appropriations for the survey, allotment, and sale of the lands thus ceded. See *Chippewa Indians* v. *United States*, 301 U. S. 358, 364–366.

During the next two decades the United States proceeded to allot to the duly enrolled members of the several Chippewa bands, including mixed bloods, specific tracts of land on the White Earth Indian Reservation in Mahnomen, Becker, and Clearwater Counties (see R. 17–18). In the trust patents issued to each of these allottees, the United States agreed to hold the lands in trust for a period of twenty-five years and then to convey them to the allottees in fee, discharged of said trust and "free of all charge or encumbrance whatsoever" (R. 18, 23).

In 1906 and 1907, prior to the expiration of the 25-year trust periods, Congress passed two statutes, generally referred to as the first and second Clapp Amendments, which declared that "all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation * * * heretofore or hereafter held by adult mixed-blood Indians, are hereby removed." Act of June 21, 1906, 34 Stat. 325, 353;

Act of March 1, 1907, 34 Stat. 1034. The county taxing authorities promptly took advantage of these statutes and placed on the tax rolls all allotments held by adult mixed-blood Indians (see R. 18–19).

However, in *Choate* v. *Trapp*, 224 U. S. 665, decided in 1912, this Court held that neither the United States nor the State of Oklahoma could abrogate a 21-year tax exemption promised the Choctaw Indians in the Atoka Agreement of 1897 (ratified by the Curtis Act of June 28, 1898, 30 Stat. 495, 505). The Indians having surrendered their tribal holdings in partial reliance upon the promise of a 21-year tax exemption, this Court concluded that individual Choctaw allottees had acquired a vested right protected by the Fifth Amendment, good against both the United States and the State of Oklahoma, and that therefore the exemption survived a 1908 statute removing restrictions on alienation in the case of certain mixed-blood Indians and declaring that all land from which restrictions had been removed should be "subject to taxation." Act of May 27, 1908, sec. 4, 35 Stat. 312.[2]

Because the promises made to the Chippewas in the Nelson Act of 1889 were markedly similar to those made to the Choctaws in the Curtis Act of

[2] For subsequent decisions by this Court to the same effect, see *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363.

1898, the United States Attorney was instructed in 1914 to bring a class suit to enjoin the tax officials of Becker County from assessing taxes against Chippewa allotments prior to the expiration of the 25-year period specified in the original trust patents. The district court granted the requested relief and the circuit court of appeals affirmed, on the ground that the 25-year tax exemption promised the Chippewas survived the repudiatory language of the Clapp Amendments, just as the promise in the Atoka Agreement had survived the 1908 Act. *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8). And in succeeding years a number of successful suits were brought by the allottees and by the United States to recover previous collections and to prevent other assessments. See, *e. g.*, *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934).

The few remaining tax claims were finally "lumped together" in the present suits which the United States brought in 1940 against Mahnomen, Becker, and Clearwater Counties for the cancellation of all taxes levied prior to the expiration of the 25-year periods, and for refunds in those instances where the taxes were paid by the allottees (R. 2–7, 22).

Seven parcels were included in the complaint filed by the Government in the Mahnomen County case (R. 3–4). Parcels 1, 3, and 5 were dismissed

with the Government's consent when it developed that taxes levied against parcel 1 before and after the expiration of the 25-year period in 1927 had been subsequently compromised by the allottee for less than the amount of the taxes assessed after 1927; that the taxes levied against parcel 3 had "been abated and cancelled upon application" to the county; and that the allottee of parcel 5 had lost his tax exemption by applying for and receiving a fee simple patent (R. 18–19). The county stipulated that parcels 2, 4, and 6 were not legally taxable prior to the expiration of the 25-year periods (R. 12–13) and did not seriously question the Government's right to have such taxes and enforcement proceedings declared illegal and void. The only substantial contest arose in connection with parcel 7. There the United States issued a trust patent to Isabelle Garden, a mixed-blood Chippewa, in December 1902. The county stipulated that this tract "was not legally taxable prior to the year 1928". (R. 13.) Taxes were nevertheless levied against this allotment commencing in 1911, the year Isabelle Garden reached her majority. Taxes for the period from 1911 to 1921, inclusive ($405.97), were paid in full by the allottee prior to 1922. The allottee discharged the taxes for 1922 to 1925 and for 1926 to 1934 by the purchase in 1936 of State Assignment Certificate No. 76 in the amount of $33.22 and State Assignment Certificate No. 232 in the amount of $145.93. (R. 13–15, 19–20.)

The cases against all three counties were submitted on agreed statements of fact (R. 22, 26). The trial court entered judgments ordering the cancellation of all taxes levied during the 25-year periods, the restoration to the allottees of lands sold for nonpayment of taxes, and the refund of all taxes levied and paid before the expiration of the 25-year periods. It refused to order a refund of taxes levied before, but not paid until after, the 25-year period expired. (R. 31–33.)

Becker and Clearwater Counties acquiesced in these judgments. Mahnomen County, however, elected to appeal from that portion of the judgment directing it to refund the taxes paid between 1911 and 1921 ($405.97) on parcel 7. The Government then filed a cross-appeal from that portion of the judgment denying recovery of taxes levied on parcel 7 between 1922 and 1925[3] and discharged by the allottee in 1936 ($33.22). The circuit court of appeals held that the United States was entitled to recover all taxes in question, whether paid before or after the expiration of the 25-year period (R. 46–52).

[3] Since her allotment "was not legally taxable prior to the year 1928" (R. 13), the allottee should not have been required to pay the taxes for 1926 and 1927. But inasmuch as the taxes for 1928 to 1934 (which she was legally required to pay) exceeded the amount she actually paid for State Assignment Certificate No. 232 covering the years from 1926 to 1934, the United States has made no claim for any refund for the years 1926 and 1927.

I

st patents which it issued to the Chip-
is, pursuant to the General Allotment
t of 1887 and the Nelson Act of 1889,
States expressly agreed to hold the
trust for a period of twenty-five years
convey them to the allottees in fee,
charge or incumbrance whatsoever."
sly the foregoing provision rendered
nts nontaxable. *United States* v.
U. S. 432; *Carpenter* v. *Shaw*, 280 U.
cf. *The Kansas Indians*, 5 Wall. 737,
view of the fact that the Chippewa
nquished large areas of land and re-
White Earth Indian Reservation in
this promise that their allotments
taxed for twenty-five years, the above-
sion has been uniformly construed as
pon the Indian allottees a vested 25-
nption which may not be revoked with-
sent. *Morrow* v. *United States*, 243
C. A. 8); *United States* v. *Spaeth*, 24
(Minn.); cf. *Choate* v. *Trapp*, 224 U.
*nter* v. *Shaw*, 280 U. S. 363. In fact,
necedes that the Chippewa allottees en-
ar tax exemption, of which they could
ved without their consent.

## II

The Clapp Amendments of 1906 and 1907, effective as to Isabelle Garden when she reached her majority in 1911, removed the restrictions on alienation, but they did not destroy her vested tax exemption. *Choate* v. *Trapp*, 224 U. S. 665, 673; *United States* v. *Waller*, 243 U. S. 452; *United States* v. *Spaeth*, 24 F. Supp. 465, 468–469 (Minn.). Since Isabelle Garden was free after 1911 to manage her allotment as she saw fit, it is incorrect to suggest that she "voluntarily" paid taxes in order to acquire a right of alienation which was already hers by virtue of the Clapp Amendments. The allottee herself sued for their recovery in 1923. Moreover, tax payments made by an allottee faced with the threat of having her lands sold for unpaid taxes are not "voluntary payments" within the rule that taxes voluntarily paid cannot be recovered. *Ward* v. *Love County*, 253 U. S. 17, 23; *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733, 735 (C. C. A. 9); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9). Furthermore, when the United States brings suit to recover moneys wrongfully exacted from an Indian allottee and to vindicate a federal right, it is not bound by state statutes of limitations, statutes governing protests, or the like. *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55, 57 (C. C. A. 10).

## III

The duty of the United States to have its guarantee of tax immunity respected is a continuing obligation even though restrictions on alienation have been removed and the allottee has been otherwise emancipated. *Cramer* v. *United States*, 261 U. S. 219, 232; *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. The Government's duty to recover the taxes unlawfully exacted from the allottee in derogation of a federal exemption is based upon the legal relation of trusteeship and springs from the obligation contained in the terms of the trust to preserve the land so that at the end of twenty-five years it can be passed to the beneficiary "free of all charge or incumbrance." *Morrow* v. *United States*, 243 Fed. 854, 859 (C. C. A. 8); *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (E. D. Wash). Any taxes which were assessed prior to 1928 and which the allottee had to discharge then or thereafter in order to obtain a free and unencumbered title were unlawful exactions which impinged upon the allottee's vested tax exemption. The fact that the suit for their recovery was not brought until after 1928 is immaterial. The United States may at any time invoke the aid of the courts "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota*, 270 U. S. 181, 194; *United States* v. *Rickert*, 188 U. S. 432,

444; *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

IV

The interest of the United States in having its obligations fulfilled and respected, being one vested in it as a sovereign, cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria,* 271 U. S. 432, 444; *Sunderland* v. *United States,* 266 U. S. 226, 232; *Bowling* v. *United States,* 233 U. S. 528, 532. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to the present action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

ARGUMENT

I

THE TRUST PATENT WHICH THE UNITED STATES ISSUED TO ISABELLE GARDEN IN 1902 CONFERRED ON HER A 25-YEAR TAX EXEMPTION WHICH COULD NOT BE REVOKED WITHOUT HER CONSENT

Petitioner stipulated in the trial court that parcel 7, allotted to Isabelle Garden by a trust patent in December of 1902, "was not legally taxable prior to the year 1928" (R. 13). And in its brief in this Court petitioner likewise concedes that the trust patents which the Government issued to

Chippewa allottees conferred on them a 25-year tax exemption of which they could not be deprived without their consent (Br. 5, 6, 19). These are necessary concessions.

In the trust patents which it granted to these Indians, the United States expressly agreed to hold their allotments in trust for a period of twenty-five years and then to convey them to the Indians in fee, "free of all charge or encumbrance whatsoever" (R. 18, 23). This provision has been uniformly construed as conferring upon the Indians a vested 25-year tax exemption, of which they cannot be deprived without their consent by either the state or the federal Governments. *United States* v. *Rickert*, 188 U. S. 432, 436, 439; *Choate* v. *Trapp*, 224 U. S. 665; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8); *United States* v. *Benewah County, Idaho*, 290 Fed. 628 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F. (2d) 55 (C. C. A. 10); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232 (C. C. A. 9); *United States* v. *Lewis County, Idaho*, 95 F. (2d) 236 (C. C. A. 9); *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733 (C. C. A. 9); *Board of Com'rs* v. *United States*, 100 F. (2d) 929 (C. C. A. 10); *United States* v. *Board of Com'rs*, 6 F. Supp. 401 (W. D. Okla.); *United States* v. *Board of County Com'rs*, 13 F. Supp. 641 (N. D. Okla.); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399 (E. D.

Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *State* v. *Ward*, 189 Okla. 532, 118 P. (2d) 216 (1941); *Iyall* v. *Yakima County*, 130 Wash. 537, 228 Pac. 513 (1924); 19 Op. A. G. 161, 166–169 (1888); 54 Int. Dec. 65 (1932); cf. *New Jersey* v. *Wilson*, 7 Cranch 164; *The Kansas Indians*, 5 Wall. 737, 760; *Carpenter* v. *Shaw*, 280 U. S. 363.

That this is the proper construction of the Government's promise to convey the allotments to the Indians "free of all charge or encumbrance whatsoever" at the end of twenty-five years seems too clear for argument. Quite obviously, the language grants the Indians a tax exemption. *The Kansas Indians*, 5 Wall. 737, 760; *United States* v. *Rickert*, 188 U. S. 432; *Carpenter* v. *Shaw*, 280 U. S. 363, 366–367. This provision, taken verbatim from Section 5 of the General Allotment (Dawes) Act of 1887, had been construed by the Attorney General in 1888 as exempting trust allotments from state or territorial taxation. 19 Op. A. G. 161, 166–169. Congress must be deemed, when it incorporated this provision in the Nelson Act of 1889, to have known of this ruling of the Attorney General and to have used the language with that gloss. *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 275–276.

And in view of its origin, it seems equally clear that the tax exemption is a vested one protected

from state or federal interference for a period of twenty-five years. *Choate* v. *Trapp*, 224 U. S. 665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; cf. *New Jersey* v. *Wilson*, 7 Cranch 164. During the negotiations with the Chippewas for a cession by them of their tribal holdings in Minnesota, the Indians were repeatedly assured that their individual allotments would be nontaxable for twenty-five years. House Ex. Doc. 247, 51st Cong, 1st sess. (Ser. No. 2747), pp. 93, 103, 104, 138 (1890). These promises were known to Congress when it accepted the lands which the various bands of Chippewas ceded to the United States (*ibid.*, pp. 1–2) and when it appropriated money for carrying out its allotment promises (Act of August 19, 1890, 26 Stat. 336, 357). The tax exemption thus conferred on the Chippewa allottees, being part of the consideration for their removal to the White Earth Indian Reservation and for their cession of tribal lands to the United States, is a property right protected by the Fifth and Fourteenth Amendments against either federal or state interference for the period therein specified, namely, twenty-five years. Having promised the Indian allottees a 25-year tax exemption, the United States is both legally and morally bound to see that its obligations are fulfilled and respected and that the Indians are not deprived of a vested 25-year tax exemption without their consent. *Choate* v. *Trapp*, 224 U. S.

665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363; *Morrow* v. *United States*, 243 Fed. 854 (C. C. A. 8).

Petitioner does not disagree with the foregoing principles since it concedes that the allotment "was not legally taxable prior to the year 1928" (R. 13; Br. 5, 6, 19). It contends, instead, that the taxes collected from Isabelle Garden are not recoverable by the United States: (1) because they were "voluntarily" paid by the allottee (Br. 5, 6, 9–27); and (2) because the United States is bound by the allottee's unsuccessful attempt to recover these taxes in proceedings which she brought in the state courts in 1923 (Br. 5, 11, 27–28). Both contentions are unsound.

## II

### IN A SUIT BY THE UNITED STATES TO RECOVER TAXES WRONGFULLY EXACTED FROM AN INDIAN ALLOTTEE, PAYMENT UNDER PROTEST IS NOT A PREREQUISITE TO RECOVERY

Although admitting that Isabelle Garden was under no legal duty to pay taxes on her allotment prior to 1928 (Br. 5, 6, 19), it is petitioner's contention that she voluntarily relinquished her exemption and paid the taxes in order that she might become an emancipated Indian and manage her allotment as she saw fit (Br. 11–27). But that right was hers under the Clapp Amendments of 1906 and 1907, 34 Stat. 353, 1034, whether she

paid the taxes or not. *United States* v. *Waller*, 243 U. S. 452.

It is true that the original trust patent which conferred on Isabelle Garden a 25-year tax exemption likewise imposed restrictions on her right to alienate the allotment. But the Clapp Amendments, applicable to Isabelle Garden when she reached her majority in 1911, removed the restrictions on alienation. Congress there declared that "all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation * * * held by adult mixed-blood Indians, are hereby removed." The fact that the taxation provision was ineffective insofar as it attempted to subject trust allotments to taxation prior to the expiration of the 25-year period did not render void the other provisions lifting restrictions on alienation. *United States* v. *Waller*, 243 U. S. 452, 461–462; *United States* v. *Spaeth*, 24 F. Supp. 465 (Minn.); *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934). As this Court has repeatedly pointed out, exemptions from taxation and non-alienability are "two separate and distinct subjects" insofar as vested rights are concerned. *Choate* v. *Trapp*, 224 U. S. 665, 673; *Williams* v. *Johnson*, 239 U. S. 414, 420. The former is a property right protected by the Federal Constitution against either state or federal interference; the latter is an expression of legislative policy which Congress, by virtue of its

plenary power over Indian affairs, can change at will, with or without the allottee's consent. *Williams* v. *Johnson*, 239 U. S. 414, 420; *United States* v. *Benewah County, Idaho*, 290 Fed. 628, 631, (C. C. A. 9); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 401 (E. D. Wash.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468, 469 (Minn.); 49 L. D. 348 (1922).

Since restrictions on alienation can be removed by legislative fiat, it follows that an Indian allotment may be unrestricted and at the same time tax exempt. Such was the situation in *Choate* v. *Trapp*, 224 U. S. 665, 669, 670, 673; *English* v. *Richardson*, 224 U. S. 680; *Carpenter* v. *Shaw*, 280 U. S. 363, 365; *Board of Com'rs of Tulsa County, Okla.* v. *United States*, 94 F. (2d) 450, 451 (C. C. A. 10); *United States* v. *Board of County Com'rs*, 19 F. Supp. 635, 636 (N. D. Okla.); *United States* v. *Spaeth*, 24 F. Supp. 465, 468 (Minn.); *Whitmire* v. *Trapp*, 33 Okla. 429, 126 Pac. 578 (1912); *Board of Com'rs of Okfuskee County* v. *Hutton*, 72 Okla. 223, 179 Pac. 922 (1919); *Grothop* v. *Stuckey*, 140 Okla. 178, 282 Pac. 611 (1929); 49 L. D. 348, 351–352 (1922); 50 L. D. 691, 693 (1924); see Act of June 28, 1898, c. 517, 30 Stat. 495, 507. Because there is nothing to prevent an allottee from simultaneously possessing an unrestricted fee and a tax immunity, it is incorrect to suggest (Br. 11–27) that Isabelle Garden voluntarily paid taxes which she did not have to pay in return for a right of alienation which she already had by reason of the Clapp Amendments.

Hence, it cannot be said that the taxes were paid by the allottee for any purpose other than to prevent her allotment from being sold for unpaid taxes. This is borne out by the fact that she herself brought suit to recover these very taxes in 1923 (R. 19–20). She was aware of the consequences of nonpayment, as well as the apparent futility of objecting to the levies. The Indians who failed to pay the taxes lost their allotments (R. 21, 23). Payments made under circumstances which prevail in these types of cases, namely, where the Indians run the risk of losing their allotments unless the taxes are paid, cannot be deemed "voluntary payments." *Ward* v. *Love County*, 253 U. S. 17, 23; *Carpenter* v. *Shaw*, 280 U. S. 363, 369; *Glacier County, Mont.* v. *United States*, 99 F. (2d) 733, 735 (C. C. A. 9); *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F (2d) 55, 57; *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934); *State* v. *Ward*, 189 Okla. 532, 118 P. (2d) 216 (1941). Any contention that the taxes are not recoverable because not paid under protest, formal or otherwise, is unsound because the courts have repeatedly held that "The United States is not precluded from recovering taxes paid without protest by an Indian ward." *United States* v. *Nez Perce County, Idaho*, 95 F. (2d) 232, 236 (C. C. A. 9); *Board of Com'rs of Caddo County, Okl.* v. *United States*, 87 F.

(2d) 55, 57 (C. C. A. 10); *United States* v. *Dewey County,* 14 F. (2d) 784, 791 (S. D.), affirmed, 26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649; *United States* v. *Board of County Com'rs,* 13 F. Supp. 641, 643 (N. D. Okla.); *United States* v. *Chehalis County,* 217 Fed. 281 (W. D. Wash.); cf. *Warren* v. *County of Mahnomen,* 192 Minn. 464, 466, 257 N. W. 77 (1934).

The quotation from *Ward* v. *Love County,* 253 U. S. 17, 22, relied upon by petitioner (Br. 7, 21), is unduly abbreviated. This Court went on to state in that case that since a federal exemption was involved the question whether the taxes were paid voluntarily or exacted by coercion was a federal one, and that the Oklahoma Supreme Court's determination that the taxes were paid voluntarily was without any fair or substantial support (253 U. S. at pp. 22–23). It is to be noted further that the United States was not the party plaintiff in that case. Local statutes of limitation, statutes governing protests, etc., are not applicable when suit is brought by the United States in its sovereign capacity to vindicate a federal policy. Cf. *United States* v. *Chehalis County,* 217 Fed. 281, 285 (W. D. Wash.); *United States* v. *Dewey County,* 14 F. (2d) 784, 791 (S. D.), affirmed, 26 F. (2d) 434 (C. C. A. 8), certiorari denied, 278 U. S. 649. Where a federal right is involved and the United States is the party plaintiff, "money got through imposition" may be recovered back,

whatever be the state law. Cf. *Ward* v. *Love County*, 253 U. S. 17, 24.[4]

## III

### IT IS IMMATERIAL THAT THE SUIT WAS NOT BROUGHT AND THAT SOME OF THE TAXES WERE NOT PAID UNTIL AFTER THE EXPIRATION OF THE 25-YEAR PERIOD

Petitioner contends that the United States may not bring suits on behalf of Indian allottees after

[4] Although petitioner twice mentions the fact that a fee patent was issued to Isabelle Garden on December 8, 1919 (Br. 2, 3), no contention is made that the patent rendered the land taxable (R. 13), inasmuch as it was issued without any application on the part of the allottee (Br. 3). Consequently, cases like *Street* v. *Schock*, 245 U. S. 192, and *Fink* v. *County Commissioners*, 248 U. S. 399, are not applicable (cf. Br. 24). The Department of the Interior caused the fee patents to be issued for two reasons: (1) to keep the records straight (see *Warren* v. *County of Mahnomen*, 192 Minn. 464, 257 N. W. 77 (1934)), inasmuch as Congress had already granted a fee by legislative fiat; and (2) because in 1919 the Department of the Interior was enforcing a "Declaration of Policy" which called for the immediate discontinuance of federal guardianship over all competent Indians (those of one-half or less Indian blood). Report of the Commissioner of Indian Affairs, 1917, pp. 3, 5; *ibid.*, 1918, p. 22. This policy, because of its disastrous consequences, was abandoned shortly after 1920. *Ibid.*, 1926, p. 10; see also Annual Report, Secy. Int. 1920, p. 9; *ibid.*, 1921, p. 54.

Since the allotment here involved was not held in a trust status on the date the confirmatory fee patent was issued to Isabelle Garden in 1919, the Secretary of the Interior has ruled that the Act of June 11, 1940, 54 Stat. 250, providing for the reimbursement by the United States of Indians for taxes paid on their allotted lands in certain circumstances, as amended by the Act of February 10, 1942, 56 Stat. 87 (25 U. S. C. A. 352c), is not applicable to the facts of this case.

the expiration of the trust periods and after their emancipation (Br. 25–26). In the trust patent which it issued to Isabelle Garden in 1902, the United States agreed to convey the allotment to her at the end of twenty-five years "free of all charge or encumbrance" (R. 18, 23). Any taxes which were assessed prior to 1928 and which the allottee had to discharge then or thereafter, in order to obtain a free and unencumbered title, were unlawful exactions and impinged upon the allottee's vested tax exemption. Since the taxes should not have been levied, it makes no difference whether they were actually paid before or after the expiration of the 25-year period. As the Eighth Circuit observed in *Morrow* v. *United States*, 243 Fed. 854, 859, "The instant case is not one depending upon governmental wardship over a dependent and inferior people, but is based upon the legal relation of trusteeship, and springs from the obligation contained in the terms of the trust to preserve the land, so that at the end of the trust period it can be passed to the beneficiary 'free of all charge or incumbrance.'" See also *United States* v. *Moore*, 284 Fed. 86, 89 (C. C. A. 8); *United States* v. *Ferry County, Wash.*, 24 F. Supp. 399, 400 (W. D. Wash.).

It is the Government's right and duty to have its consensual obligations properly discharged and its declared policies fully respected. To this end, it may invoke the aid of the courts "in removing

s to the fulfillment of its obli-
*l States* v. *Minnesota*, 270 U. S.
*States* v. *Rickert*, 188 U. S. 432,
*ty, Okl.* v. *United States*, 123 F.
. 10), certiorari denied, 315 U. S.
of the United States in having
l policies observed "is one which
a sovereign." *United States* v.
S. 181, 194.

he United States to have its
immunity respected is a con-
even though the allottees have
e restrictions on alienation have
l the Indians have been other-
l from a wardship status.
*l States*, 261 U. S. 219, 232;
*d States*, 224 U. S. 413, 437;
*l.* v. *United States*, 123 F. (2d)
certiorari denied, 315 U. S. 819;
*f Tulsa County, Okl.* v. *United*
450, 452 (C. C. A. 10); *United*
*e Mercantile Co.*, 68 F. (2d)
9). The *Bryan County* case,
n point. There the tax exemp-
pired, the allottees had become
had even assigned their tax
arty. The United States was,
d to maintain the suit and to
which the county had wrong-
the allottees. In this connec-

tion, it is to be remembered that an Indian may be emancipated for some purposes and not for others. *United States* v. *Waller*, 243 U. S. 452, 459–460; *United States* v. *Nice*, 241 U. S. 591, 598; *United States* v. *Sherburne Mercantile Co.*, 68 F. (2d) 155, 158. (C. C. A. 9).

## IV

THE UNITED STATES IS NOT BOUND BY THE ALLOTTEE'S UNSUCCESSFUL ATTEMPT TO RECOVER THE TAXES IN THE STATE COURT

The interest of the United States in having its obligations and policies respected, being one which is vested in it as a sovereign (*United States* v. *Minnesota*, 270 U. S. 181, 194), cannot be defeated by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria*, 271 U. S. 432, 444; *Sunderland* v. *United States*, 266 U. S. 226, 232; *Privett* v. *United States*, 256 U. S. 201, 204; *Bowling* v. *United States*, 233 U. S. 528, 534. Accordingly, the unsuccessful suit instituted by the allottee in 1923 is no bar to this action by the United States to recover taxes illegally collected by Mahnomen County. *Bryan County, Okl.* v. *United States*, 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819. Here again the *Bryan County* case is squarely in point. There the allottees assigned their tax-refund claims to one Broadwell who brought suit to recover the taxes in the state courts of Okla-

homa. The suit was defeated by a plea of limitations. *Broadwell* v. *Board of Com'rs of Bryan County,* 88 Okla. 147, 211 Pac. 1040 (1922), certiorari denied, 262 U. S. 750. But that judgment did not prevent the United States from subsequently recovering those taxes in its own courts. *Bryan County, Okl.* v. *United States,* 123 F. (2d) 782 (C. C. A. 10), certiorari denied, 315 U. S. 819.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the circuit court of appeals should be affirmed.

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APRIL 1943.

## APPENDIX

Section 5 of the General Allotment (Dawes) Act of February 8, 1887, c. 119, 24 Stat. 388, 389, provides:

> That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. * * * (25 U. S. C. 348.)

Sections 1 and 3 of the Nelson Act of January 14, 1889, c. 24, 25 Stat. 642, so far as pertinent, provide:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States is hereby authorized and directed, within sixty days

after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; * * *.

* * * * *

SEC. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in sever-

> alty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; * * *.

The first Clapp Amendment of June 21, 1906, c. 3504, 34 Stat. 325, 353, provides:

> That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

The second Clapp Amendment of March 1, 1907, c. 2285, 34 Stat. 1034, provides:

> That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby de-

cleared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application.

U. S. GOVERNMENT PRINTING OFFICE: 1940

# SUPREME COURT OF THE UNITED STATES.

No. 684.—October Term, 1942.

County of Mahnomen, a Municipal Corporation, Petitioner, vs. The United States of America. | On Writ of Certiorari to the United States Circuit Court of Appeals for the ~~Ninth~~ Eighth Circuit.

[June 7, 1943.]

Mr. Justice Black delivered the opinion of the Court.

This action was brought by the government in a federal district court to recover real estate taxes alleged to have been illegally collected by Mahnomen County, Minnesota, from Isabelle Garden, an Indian allottee.[1] The suit, brought in 1940, seeks a refund of taxes for the years 1911 to 1927 inclusive. It is conceded that any limitation on the County's power to tax expired in 1928 with the termination of the twenty-five year trust described below. The District Court rendered judgment against the County for the years 1911 to 1921, inclusive, giving a total judgment of $405.97. On appeal by both the government and the county, the Circuit Court of Appeals affirmed but gave an added judgment for the years 1922 through 1925. 131 F. 2d 936.

In its petition for certiorari, the county claimed that Garden was an emancipated Indian who had paid the taxes voluntarily, and that hence the judgment granting a refund conflicts with *Ward* v. *Love County*, 253 U. S. 17. The county also contended that it was wholly within an Indian reservation; that it had long been dependent on taxation of allotted lands; that after the passage of the first Clapp Amendment in 1906, 34 Stat. 325, 353, which emancipated the Mahnomen County Indians, and lifted "all restrictions as to the sale, incumbrance, or taxation for allotments", the County had assumed that the Indians could voluntarily contribute to the support of County institutions; and that while the instant judgment is small, the aggregate amount of such judgments which might be obtained in similar actions would adversely affect the solvency of the County and imperil the continuance of county institutions. On these representations of the public importance of the case, we granted certiorari. — U. S. —.

[1] The government's original complaint included additional claims against Mahnomen and other counties, but these other claims are not involved in the case as it reaches us.

In 1902, the Secretary of the Interior, acting under Congressional authority, issued a patent to this Indian allottee, agreeing to hold a tract of land in trust for twenty-five years "for the sole use and benefit of the Indian" and then to convey the land to her "discharged of said trust and free of all charge or incumbrance whatsoever."[2] Indian land so held by the government has been said to be exempt from all State taxation. *United States* v. *Rickert*, 188 U. S. 432, 436-438. The first and second Clapp Amendments, passed in 1906 and 1907[3] lifted restrictions previously imposed upon the sale, encumbrance and taxation of the allotments of adult mixed-blood Indians, and in addition declared that "the trust deeds heretofore or hereafter executed by the Department for such allotments, are hereby declared to pass the title in fee simple." Garden is an adult mixed-blood Indian and has been an adult since 1917, when the first controverted tax payment was made. These amendments evidence "a legislative judgment that adult mixed-blood Indians are in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands." *United States* v. *Waller*, 243 U. S. 452, 462; *Baker* v. *McCarthy*, 145 Minn. 167, 170.

Notwithstanding these acts the County concedes and we assume arguendo, that it was without power to impose a tax upon these allotted lands prior to 1928 against the consent of the Indians. *Choate* v. *Trapp*, 224 U. S. 665.[4] The Clapp Amendment gives the consent of the United States to state taxation, thus removing the barrier to taxation found to exist in *United States* v. *Rickert*, *supra*; but under *Choate* v. *Trapp*, the Indian, who has gained a "vested right" not to be taxed, must also consent. Acceptance of *Choate* v. *Trapp* does not mean that an Indian, legislatively declared to be competent to handle his own affairs, cannot voluntarily decide to pay taxes for his own advantage and welfare. If, as the petitioner argued, and as the government does not deny, the capacity of the County to provide schools, roads, and other necessary services would have been seriously

[2] 24 Stat. 388, 389; 25 Stat. 642.

[3] 34 Stat. 325, 353; 34 Stat. 1034.

[4] We do not consider whether Choate v. Trapp is controlling here. In that case the government had patented land with a provision that "the land should be non taxable" and the agreement with the Indians was held to be a contract which "having been accepted by the State of Oklahoma in its Constitution upon admission to statehood, was a limitation upon the taxing power of the State." Carpenter v. Shaw, 280 U. S. 363, 366.

jeopardized, if not destroyed, by the failure of the Indians to contribute to a tax fund, their newly granted emancipation would have been of little value. In addition, the market value of their lands would have been greatly reduced by the complete inability of the County to secure funds essential to the establishment of means of travel and communication and the maintenance of an orderly society. Nothing that was said in *Choate* v. *Trapp*, or in any other decision of this Court, deprived an emancipated Indian of freedom voluntarily to pay taxes in his own interest. *Ward* v. *Love County*, 253 U. S. 17, 22, assumed that the test of the right to recover a tax illegally collected from an Indian is whether the tax was paid voluntarily, and that the burden is upon one seeking recovery of the tax to establish that the payment was made involuntarily. The issue before us, therefore, is whether the government has sustained that burden.

There is no allegation, stipulation, or finding by either court that these taxes were involuntarily paid. Both courts below erroneously assumed that the government's original obligation to hold the land in trust and deliver it free of encumbrances permits the government to maintain this suit even though the Indian has willingly paid taxes. 1911-1921 taxes were evidently paid without protest, and there is nothing in the record to permit a deduction that the payments were involuntary.[5]

The 1922-25 taxes were discharged in somewhat different fashion. The allottee became delinquent in the payment and the lands were sold to the State. Subsequently, in 1936, she made a compromise arrangement with the State, for a period including not only the years 1922-27, for which tax exemption is claimed, but also for the years 1928-34, for which there is no conceivable claim of exemption. This compromise, made in the form of purchase of two tax certificates for the allottee, resulted in payment by Garden for the entire 1922-34 period of *less* than the amount of the 1928-34 taxes. The compromise, made at a time when the Indian was fully as free as any other citizen, was, in the words of the District

[5] In 1923 Garden sued in a state court for recovery of her 1911-1921 taxes. A demurrer was sustained in the trial court and no appeal was taken. The record does not show that she had made the tax payments under protest, which would probably have entitled her to recovery under state law according to the doctrine of Warren v. Mahnomen County, 192 Minn. 464. This action, brought after the tax benefits had been enjoyed, is no indication that she did not originally pay the taxes willingly in order to enjoy the benefits of county government. We need not consider the contention of the County that the 1923 action is res adjudicata. Cf. Bryan County v. United States, 123 F. 2d 782.

Court, a "voluntary action and election of the allottee to proceed in a manner which she deemed wise and prudent." It resulted in a net saving to the allottee of $66.42 for the taxable years 1928-1934.[6] The voluntary nature and the fairness of the 1936 settlement are further indicated by the fact that the County, in its answer to the complaint, has declared its willingness to refund the sum paid in settlement in order that it may relevy the taxes for the years 1928 and 1934 and thus collect the taxes which Garden admittedly owed.

The allottee paid the 1911-21 taxes voluntarily and settled the balance of her taxes to her advantage in 1936. Neither Minnesota law[7] nor federal law[8] requires that a county refund taxes which an emancipated Indian has voluntarily paid. The County is entitled to judgment in its favor.

*Reversed.*

Mr. Justice FRANKFURTER and Mr. Justice RUTLEDGE concur in the result.

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[6] The parties have entered the following stipulation as to the payment of these taxes: "That said taxes for the years 1922 and 1927, both inclusive, were paid and discharged by the said allottee by the purchase by her of State Assignment Certificate No. 76 in the amount of $33.22 covering the taxes for the years 1922 to 1925, both inclusive, and State Assignment Certificate No. 232 in the amount of $145.93 covering taxes for the years 1926 to 1934, both inclusive, all pursuant to Chapter 387 Laws of Minnesota for 1935, that the aggregate for said State Assignment Certificates is the sum of $179.15 and that the valid taxes for the years 1928 to 1934, both inclusive, thereby discharged amounted to $245.57 without penalty or interest and that therefore said allottee effected a saving of $66.42 plus penalty and interest by the purchase of said State Tax Assignment Certificates."

The government in effect concedes the merit of the argument that the 1936 settlement was a fair and voluntary compromise but seeks to avoid its force by an assumption that the two tax certificates are to be treated in different fashion. As the stipulation makes clear, Certificate Number 76 formally covers the years 1922-25, and No. 232 covers the years 1926-34. In view of the substantial benefit received by the allottee from the compromise, the government has waived its claim for any refund for the years 1926-27, but it apparently assumed that Certificate No. 76 was unrelated to this compromise. However, both Certificates were purchased at the same time, both covered the same lands, and each would be worthless without the other since the Minnesota law under which the arrangement was made is aimed at the settlement of all delinquent taxes. C. 387, Minn. Laws, 1935; Minn. Stat. (Henderson, 1941), § 280.11-13; *cf.* Security Trust Co. v. Heyderstaedt, 64 Minn. 409. The reason for the use of two certificates, one for the years prior to 1925 and the other for the years thereafter, may have resulted from the fact that the Minnesota statute applies different standards of value to compromises of taxes delinquent prior to 1925 and those delinquent thereafter. As is indicated by the stipulation, the transaction for the two certificates was considered as a unit and is in fact one compromise, termed by the trial judge a settlement for a "lump sum".

[7] Falvey v. Board of County Commissioners, 76 Minnesota 257; Warren v. County of Mahnomen, *supra.*

[8] Ward v. Love County, *supra*; Carpenter v. Shaw, 280 U. S. 363.

**Mr. Justice MURPHY, dissenting.**

I dissent because the Court today takes too narrow a view of our obligations to our Indian citizens—obligations engendered by a history marked at times with trespass, depredation and corruption, and by the concomitant necessity of aiding and protecting a people once dependent and unlearned in our ways during their difficult period of transition from that situation to the assumption of civic responsibilities and assimilation into the mass of our citizenry.

The assumptions which the opinion of the Court makes regarding the tax status of Isabelle Garden's allotted land but state the applicable law. The land which she received in 1902 under a trust patent, issued pursuant to the Nelson Act (25 Stat. 642) and the General Allotment Act (24 Stat. 388), was exempt from state and local taxation for a period of 25 years, or until 1928. *United States* v. *Rickert*, 188 U. S. 432; *Board of Commissioners* v. *Seber*, — U. S. —, No. 556 this Term. Since the tribe to which she belonged gave up its extensive holdings after assurances that the forthcoming allotments would be non-taxable for 25 years,[1] this tax exemption was a vested right of which she could not be deprived without her consent. *Choate* v. *Trapp*, 224 U. S. 665; *Ward* v. *Love County*, 253 U. S. 17; *Carpenter* v. *Shaw*, 280 U. S. 363. Consequently, although Isabelle Garden upon reaching her majority in 1911 became emancipated by virtue of the Clapp Amendments of 1906 and 1907 (34 Stat. 353, 1034), that legislation did not disturb her vested tax exemption.

The Court's reliance upon *Ward* v. *Love County*, 253 U. S. 17, as the basis for its decision with regard to the 1911-21 taxes paid by Isabelle Garden is unwarranted. In that case it was assumed that an emancipated Indian possessing a vested tax exemption could not recover back taxes illegally assessed but voluntarily paid. 253 U. S. at 22. But that case did not hold, as the Court now asserts that it did, that the burden was on the Indian claimant to establish the involuntary character of the payment. Still less, since the United States was not a party, did it consider what the rights of the United States would be should it bring suit on behalf of the Indian. That is the instant question, and while it is ordinarily true that the burden of demonstrating the illegality of a

[1] House Ex. Doc. 247, 51st Cong., 1st Sess. (Ser. No. 2747), pp. 93, 103, 104, 138 (1890). See also Morrow *v.* United States, 243 Fed. 854.

collected tax and compliance with the statutory requirements for refund are upon the taxpayer seeking recovery, strong reasons of policy suggest an opposite rule should prevail in this case. While "emancipated" upon attaining twenty-one, Isabelle Garden was an Indian "just emerging from a state of dependency and wardship", *Ward* v. *Love County, supra,* at p. 23, and the United States had the right, if not the duty, to enforce for her benefit its guarantee of tax immunity even though she was a citizen, the restrictions on her property were removed, and she was otherwise emancipated from a wardship status. Cf. *Cramer* v. *United States,* 261 U. S. 219, 232; *Heckman* v. *United States,* 224 U. S. 413, 437; *United States* v. *Minnesota,* 270 U. S. 181, 194. To hold that the United States is foreclosed by action which Isabelle Garden may have taken or failed to take in ignorance of her legal rights is to hinder the United States in the performance of its considered policy of protection and to deprive her indirectly of that which she could not directly be deprived—her vested tax exemption. Without legal right the County placed her tax exempt property upon its tax rolls immediately upon her reaching adulthood, assessed it, and she paid the taxes under circumstances not fully disclosed. In this situation it is only fair to put the burden on the County, whose unauthorized action brought it about, of establishing that she paid the taxes of her own free will with full knowledge of her legal rights. A contrary rule fails to take into account the long and not altogether creditable history of our relations with the Indians and the obligations we owe to those people to protect them in their rights.

Apart from the question of burden of proof, however, I cannot agree with the opinion of the Court. The crucial issue with regard to the 1917-21 taxes is assumed to be the voluntary or involuntary character of those payments. The trial court admittedly made no findings on this issue and in the absence of such findings, the proper procedure would be to remand the case to the trial court. Cf. *Seminole Nation* v. *United States,* 316 U. S. 286, 300. But if we are to decide the case here by indulging in presumptions, I think the only tenable assumption is that the payments were made under compulsion. Isabelle Garden's land was assessed immediately after she became twenty-one, and she ran the risk of losing it unless she paid the taxes. The record shows that some of the Indians, originally included in this action, who failed to pay their taxes did lose their allotments. On the record

it cannot be said with certainty that Isabelle Garden paid the taxes for any other purpose than to prevent her allotment from being sold for unpaid taxes. This is borne out by the fact that she herself brought suit in 1923 to recover the 1911-21 taxes.[2] Suggested reasons for finding that the payments were voluntary are without substance. Isabelle Garden did not have to pay those taxes for the privilege of managing her allotment as she wished. That right was hers under the Clapp Amendments which were competent to remove the restrictions upon her land, but not the vested tax immunity. Cf. *Choate* v. *Trapp*, *supra*, p. 673. And there is nothing in the record, apart from argument contained in the County's unsuccessful motion for a new trial, to support the assumption that she voluntarily paid the taxes to enjoy the benefits of County government. Payments made under circumstances such as this, where an exempt Indian runs the risk of losing her allotment unless the taxes are paid, should not be considered voluntary payments. Cf. *Ward* v. *Love County*, *supra*, p. 23; *Carpenter* v. *Shaw*, 280 U. S. 363, 369.

Finally, I cannot assent to the proposition that since Isabelle Garden settled her taxes for 1922 through 1934 for less than the amount she owed for taxes validly assessed for the period beginning in 1928 when her land became taxable, the United States cannot recover for her the amounts she paid to discharge the 1922-25 taxes. Those taxes were discharged in 1936 by the purchase of State Assignment Certificate No. 76. At the same time the taxes for 1926-34 were discharged by the purchase of another assignment certificate. The fact, unexplained by the stipulation, that two certificates were used to discharge the taxes suggests that there was no relation between the discharge of the 1922-25 taxes and the settlement of the admittedly due taxes for 1928-34. But even if a relation is assumed, the United States should still be allowed to recover the amount paid for Assignment Certificate No. 76. Isabelle Garden probably would have been able to compromise her 1928-34 taxes even more advantageously if the County had not asserted its unwarranted claims for the years 1922-25

[2] This unsuccessful suit is no bar to the present action by the United States. The interest of the United States in having its obligations and policies respected cannot be defeated by judgments in actions to which it is not a party. United States v. Candelaria, 271 U. S. 432, 443-44; Sunderland v. United States, 266 U. S. 226, 232; Privett v. United States, 256 U. S. 201, 204; Bryan County, Okl. v. United States, 123 F. 2d 782.

during which period the property was still tax exempt. That is sufficient to warrant recovery of the amount paid for Assignment Certificate No. 76 in discharge of the 1922-25 taxes.[3]

[3] This analysis also indicates that the portion of the assignment certificate covering the period 1926-34 which discharged the taxes levied for 1926 and 1927 should be returned. The Government, however, presses no claim for these amounts here.